



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

SeneddLJC@senedd.wales

2 June 2023

Dear Huw

Thank you for your letter of 15 May concerning the Healthcare (International Arrangements) (EU Exit) Regulations 2023 (“the HIA Regulations”). I have addressed your questions regarding the HIA Regulations below.

Question 1

In the letter you state that the HIA Regulations “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”. When will section 162 of the Health and Care Act 2022 (the 2022 Act) be brought into force?

My officials expect the commencement to be this summer based on the information provided by their UK Government counterparts.

Question 2

In your letter you state “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.” You also state “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.” We would be grateful to receive further clarity on the specific differences between the HIA Regulations and the HEEASA Regulations and what is meant by the phrase “broadly retains the status quo”.

The Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 (“HEEASA regulations”):

- confer a duty on the UK NHS Business Services Authority (NHS BSA) to, subject to instructions given by the Secretary of State, make payments on a UK wide basis under section 1 of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 (“the 2019 Act”) (which enables the Secretary of State to make payments, or arrange for payments to be made, in respect of the cost of healthcare provided in an EEA State or Switzerland), and to assist the Secretary of State with the exercise of the Secretary of State’s functions in relation to making such payments, giving effect to healthcare agreements and arrangements and the provision of healthcare in member states;
- confer functions to give effect to obligations and commitments of the UK under healthcare agreements or arrangements, on NHS BSA and the Secretary of State;
- impose information and advice functions on NHS BSA (i.e. to establish and maintain a public information and advice service);
- confer S2 planned treatment functions on NHS England, Welsh Local Health Boards (LHBs) and Scottish health boards (i.e. to carry out clinical determination of applications in accordance with international healthcare agreements and arrangements);
- provide for the Secretary of State and Ministers of the Devolved Governments to be able to determine, along with relevant health boards, the NHS S2 (planned) treatment applications.

The HIA Regulations ‘broadly retain the status quo’ as the roles of the Secretary of State, NHS BSA, and relevant health boards (e.g. Welsh LHBs in relation to Wales) within the legal framework broadly remain the same.

Section 162 of the Health and Care Act 2022 (“the 2022 Act”) removed the Secretary of State’s wider power to make healthcare payments in section 1 of the 2019 Act and the power to make regulations in relation to healthcare and healthcare agreements in section 2 of the 2019 Act. Those powers were created to support people to access healthcare in the EEA and Switzerland in the event of leaving the EU without an agreement and such measures were no longer needed. Section 162 replaced the previous powers with a healthcare agreements and payments discretionary regulation-making power. As a result, the HIA Regulations enable the Secretary of State to, on a UK wide basis, make a payment and arrange for the making of the payment, in respect of healthcare provided in a listed country under a healthcare agreement and to make payments (otherwise than under a healthcare agreement) in respect of healthcare provided in a listed country where the Secretary of State considers exceptional circumstances justify the payment (with the ability for referrals for applications or claims for such payments to be made by NHS BSA, NHS England, Welsh LHBs and Scottish local health boards).

Under the HIA Regulations, the NHS BSA is still required to give effect to the obligations and commitments of the UK under relevant healthcare agreements, to assist the Secretary of State with their exercise of functions in relation to relevant healthcare agreements and the provision of healthcare in listed countries and to establish and maintain a public information and advice service. Relevant health boards (e.g. Welsh LHBs in relation to Wales) are also still required to carry out clinical determinations of S2 planned treatment applications, in accordance with relevant healthcare agreements.

In addition, along with a number of technical changes the HIA Regulations also:

- list countries party to international healthcare agreements with the UK (whereas the HEEASA Regulations required the Secretary of State to publish and maintain a separate list of international healthcare agreements);
- require the Secretary of State, NHS BSA, NHS England, Welsh LHBs and Scottish health boards to establish and publish procedures for the determination of applications and claims within their remit, which must include provision for a review process.

The HIA Regulations do not carry forward the power from HEEASA enabling the Secretary of State and Ministers of the Devolved Governments to determine, along with relevant health boards, NHS S2 (planned) treatment applications. However, this power in the HEEASA Regulations has never been used in Wales and there are no foreseeable circumstances where the Welsh Ministers would wish to determine an S2 (planned) treatment application, as such applications are subject to clinical assessment which sits with the LHBs. The Welsh Government does not have the required clinical expertise to make such a determination and therefore provide the relevant advice to Ministers in this regard.

As section 162 of the 2022 Act also enabled regulations to be made in this area which implement comprehensive reciprocal agreements with countries outside the EEA and Switzerland, the HIA Regulations apply to listed relevant healthcare agreements with Rest of the World countries.

Question 3

You will be aware that, in our report on The Welsh Government's Legislative Consent Memorandum on the Health and Care Bill (December 2021 report) and in our subsequent report on The Welsh Government's Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No. 3) on the Health and Care Bill (February 2022 report), we expressed concerns about what became section 162 of the 2022 Act, the breadth of delegated powers it provided to Ministers, and the consequences such regulations could have for NHS bodies in Wales.

Conclusion 6 in our February 2022 report said "The Welsh Ministers should make any necessary regulations in devolved areas for the purpose of giving effect to international healthcare agreements. Where they do not do so, and the power to confer relevant functions onto the Local Health Boards regarding healthcare agreements is instead exercised by the Secretary of State, the Welsh Ministers must provide full detail and an explanation to the Senedd in advance of such regulations being made by the Secretary of State."

We acknowledge that your letter of 25 April does notify the Senedd of the planned making of the HIA Regulations by the Secretary of State. We would welcome confirmation and clarity as to how Welsh Local Health Boards have been consulted on the HIA Regulations

The LHBs have been kept updated by my officials on the progress of the HIA Regulations and specifically consulted on the area of the HIA Regulations that imposes a new duty on them (ie, the requirement for LHBs to establish and publish procedures for the determination of S2 applications, which include provision for a review process). The LHBs have also been consulted by UK Government on the process and guidance for applying to the Secretary of State for healthcare payments in exceptional circumstances as these may be sought on behalf of a patient by their LHB.

Question 4

In your letter you state “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.” As highlighted in the previous question, conclusion 6 in our February 2022 report recommended that the Welsh Government should make any necessary regulations in devolved areas for the purpose of giving effect to international healthcare agreements.

a) Can you explain why you consider it “more pragmatic and efficient to have UK Government carry out this work on [your] behalf”.

Each time the UK Government enters into a new healthcare agreement with a country or territory, the HIA Regulations will need to be amended to add that country or territory to the Schedule on a UK wide basis, to give effect to and implement the agreement across the UK. Given that UK Government intends to seek agreements with a number of countries in the coming years, there could be a necessity for an ongoing series of amendments to be made to the Schedule. The UK Government will be required to amend the Schedule each time they enter into a new healthcare agreement, at least in relation to England. As they also have the competence to amend the Schedule on a UK wide basis, it is pragmatic and efficient for them to apply any such amendment to Wales, given that an equivalent amendment would be required in relation to Wales in any event.

In addition, as set out below, the impact on the LHBs of listing such agreements in the HIA Regulations is likely to be extremely low and I thus consider legislating separately for Wales when a new agreement is required to be listed would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources given other important priorities.

b) Can you confirm that, when the power to confer relevant functions onto the Local Health Boards regarding healthcare agreements is exercised by the Secretary of State in the future, the Welsh Ministers will provide full details and an explanation to the Senedd in advance of such regulations being made.

I can confirm that the WG will continue to inform the Senedd where the UK Government exercises a delegated legislative power in a devolved area in relation to Wales explaining the rationale for this.

c) What assessments will be undertaken by the Welsh Government of the implications for Welsh Local Health Boards before any consent is given to the UK Government to make further regulations which add countries to the Schedule?

There is no statutory requirement for UK Government to seek the Welsh Minister’s consent in respect of further regulations adding further countries to the Schedule. Following the commencement of section 162 of the Health and Care Act 2022 and the coming into force of the HIA Regulations, section 5 of the Healthcare (International Arrangements) Act 2019 (formerly titled the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019), will contain a statutory requirement for the Secretary of State to consult with Welsh Ministers before making regulations that contain provision which is within the legislative competence of the Senedd. This should be carried out under the terms of the Intergovernmental Memorandum of Understanding in Respect of the Consultation Process for International Healthcare Agreements and their Implementation Regulations (“the MOU”) (annexed to this letter).

The impact on LHBs of the listing of further agreements within the Schedule to the HIA Regulations is likely to be minimal, as the only duties placed on LHBs by the HIA Regulations are those relating to S2 planned treatment. These impacts will, however, be considered as a part of the consideration by the Welsh Government of the impacts of each individual agreement.

The majority of healthcare agreements do not provide for UK residents seeking planned healthcare abroad, and this is expected to continue in future agreements. The numbers of Welsh residents seeking planned healthcare in the EU or Switzerland (the only agreements which currently provide for this) are low. Though the UK is currently negotiating a Social Security Convention likely to include a planned healthcare provision with the European Economic Area/ European Free Trade Association States of Lichtenstein, Iceland and Norway, however this would not be expected to significantly increase the number of Welsh patients seeking planned treatment abroad. In addition, the costs for Welsh patients of the treatment itself (other than those costs which must be met by the patient) are met by the UK Government.

Please note that agreements between the UK and other countries are binding on the UK as a whole and Wales is required to implement and observe them. Thus the LHBs would in practice have to undertake a similar duty with regard to S2 planned treatment applications whether new agreements are listed in the Schedule to the HIA Regulations or not.

d) Can you confirm if you are aware of any upcoming international healthcare agreements.

I can confirm that a Social Security Convention including elements of reciprocal healthcare is currently being negotiated with European Economic Area/ European Free Trade Association States of Lichtenstein, Iceland and Norway (a Social Security Convention having been signed last year with Switzerland).

I can also confirm that new or revised agreements are being progressed by the UK Government with a number of UK Overseas Territories and with Jersey and the Isle of Man.

e) How are the Welsh Government and Welsh Local Health Boards being included in negotiations, or being sufficiently consulted, about ongoing and future agreements with other countries?

My officials meet regularly with UK officials under the terms of the MOU and input into the drafting of agreements shared by the UK Government as appropriate.

There is no requirement under the MOU for LHBs to be consulted by UK Government on international healthcare agreements however the LHBs are aware of the ongoing UK Government work in this area and meet regularly with my officials around issues such as overseas visitors and planned health care.

f) Can you confirm whether these Regulations are being taken through the processes outlined in the intergovernmental Memorandum of Understanding in Respect of the Consultation Process for International Healthcare Agreements and their Implementation (a version of which was made available to us in February 2022).

I can confirm that the process set out Section 8 ("Regulations under HIAA") of the MOU has been followed in the development of the HIA Regulations.

Question 5

In your letter you state “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.” We would welcome further explanation and clarity on your statement that “having the UK Government make this provision for Wales would not be detrimental to the policy position in this area”.

Our policy position in this regard is the currently same as the UK Government’s and I do not anticipate this changing. The provisions of the HIA regulations thus align with our policy. As set out above, should our policies in this area diverge in the future we have the power under section 2A of the Healthcare (International Arrangements) Act 2019 to make our own regulations to implement certain changes in Wales, provided those changes are within devolved competence, the scope of which is prescribed by section 2A(2) and (4)(b) of the Act. Thus, having the UK Government make this provision for Wales is not detrimental to current or future Welsh policy in this area.

I trust this answers your questions.

This letter has been copied 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

**MEMORANDUM OF UNDERSTANDING BETWEEN THE UK GOVERNMENT
SECRETARY OF STATE FOR THE DEPARTMENT OF HEALTH AND SOCIAL CARE
AND THE SCOTTISH CABINET SECRETARY FOR HEALTH AND SOCIAL CARE, THE WELSH
MINISTER FOR HEALTH AND SOCIAL SERVICES, AND THE MINISTER OF HEALTH FOR
NORTHERN IRELAND (THE “DEVOLVED ADMINISTRATIONS”)**

**In Respect of the Consultation Process for International Healthcare Agreements and their
Implementation**

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A. INTRODUCTION

1. Overview and Scope

- 1.1 This Memorandum sets out the understanding of the United Kingdom (UK) Government Secretary of State for the Department of Health and Social Care (DHSC) and the Scottish Cabinet Secretary for Health and Social Care, the Welsh Minister for Health and Social Services, and the Minister of Health for Northern Ireland (“the devolved administrations”), on the consultation requirement in section 5 of the Healthcare (International Arrangements) Act 2019 (HIAA).
- 1.2 The implementation of international reciprocal healthcare agreements, which include reimbursement and the exchange of data, is enabled by HIAA. Sections 2 and 2A of HIAA confer powers on the Secretary of State and Ministers in the devolved administrations to make regulations for the purpose of giving effect to international reciprocal healthcare agreements. The power to make regulations is conferred on Ministers within the devolved administrations where it would be within their devolved competence to make such provision.
- 1.3 This Memorandum of Understanding sets out the arrangements for consultation and meaningful engagement in the formulation, negotiation, and implementation of new, revised and updated international reciprocal healthcare agreements around the world.

1.4 This Memorandum sets out how the Secretary of State will meet the legal requirement to consult with the devolved authorities before making regulations under section 2 that contain provisions within the legislative competence of the devolved legislatures. In addition, it provides a framework for a shared and cohesive approach to international reciprocal healthcare policy. It does not create any additional legally enforceable rights and obligations between the parties. Nothing in this Memorandum should be construed as conflicting with the Belfast Agreement.

Responsibilities for Negotiating and Delivery of International Reciprocal Healthcare Agreements

1.5 The UK Government is responsible for international relations and has overall responsibility for concluding treaties and other international agreements on behalf of the United Kingdom.

1.6 The implementation of international healthcare obligations will usually be within the devolved competence of the devolved administrations when the obligations relate to devolved healthcare provision within those countries.

2. Overarching Principles

2.1 DHSC and the devolved administrations are committed to delivering collectively a reciprocal healthcare policy that works for residents throughout the UK as a whole in order to realise the broad benefits of international reciprocal healthcare agreements.

2.2 The arrangements set out in this Memorandum of Understanding will be underpinned by the principles of open communication, consultation, and cooperation. DHSC and the devolved administrations are committed to making representations to each other as necessary in sufficient time for those views or concerns to be fully considered.

2.3 DHSC and the devolved administrations recognise the importance of ensuring international reciprocal healthcare policy alignment for all healthcare systems across the UK and will work closely to develop and maintain a cohesive international reciprocal healthcare system that delivers for all UK residents.

2.4 For those negotiations where DHSC is not the lead Government Department, DHSC and the devolved administrations will proceed on the principles set out in this Memorandum of Understanding on specific international reciprocal healthcare elements.

B. CONSULTATION PROCESS – POLICY AND AGREEMENTS

3. Policy Mandate and Formation

Strategy Formulation

3.1 This Memorandum establishes arrangements (Annex A – Stage 1) for collaborative policy development and analysis where responsibility for implementation of those policies is within devolved competence. These arrangements provide a vehicle for meaningful engagement on policy proposals to take into negotiations. The arrangements will apply to the formation of overarching policy and model agreements as well as to individual policy mandates for reciprocal healthcare agreements with third countries. These arrangements will apply to any proposals for the review or amendment of implemented healthcare agreements with a view to reaching consensus by all parties on the proposed action. The administrations recognise that cooperation is necessary to meet their respective policy objectives.

3.2 DHSC will consult the devolved administrations in writing where policy areas engage or have the potential to engage devolved competence. Consultation will be as early as possible and at a formative stage of policy development, as officials start to consider policy proposals, political steers, or third country requests for reciprocal healthcare agreements. The devolved administrations will

respond in writing in a timely manner to DHSC setting out their views and any concerns about what is proposed on behalf of their Ministers and Executive. The devolved administrations will be sent copies of papers and be invited to meetings on subjects in which they have a devolved policy interest. Given the complexity of agreements, the strategy formulation will include engagement with all key partners as outlined in Annex A - Stage 1.

- 3.3 The arrangements will include regular informal and working level engagement between officials and Ministers to discuss policy proposals on the strategic direction for new international reciprocal healthcare agreements, or for proposals to renegotiate existing international reciprocal healthcare agreements and any projected impact assessments of those proposals. DHSC will arrange a regular international reciprocal healthcare meeting with the devolved administrations on the issues, to be held with a frequency agreed with the devolved administrations. DHSC will ensure that the devolved administrations are given as much time as possible to properly consider proposals and feedback their views.
- 3.4 In order to enable each administration to operate effectively, the administrations will aim to provide each other with full and open access to policy information as possible, for example data on S2 planned treatment, that may be requested where reasonable and appropriate. The devolved administrations will be invited to contribute to Impact Assessments, on areas of devolved competence, which will be shared to support transparency on cost and benefits and inform evaluations of impact across the UK. The emphasis will always be on exchanging information where this proves possible to ensure a consistent approach to reciprocal healthcare policy and consideration of impact.
- 3.5 Ordinarily there will be discussions between DHSC and devolved administration officials in the first instance to reach a view on the policy before DHSC and devolved administration officials put advice to their respective Ministers. DHSC officials will clearly identify where the views of the devolved administration Ministers are still pending in their advice to DHSC Ministers. DHSC officials will ensure that the views of the devolved administration Ministers are represented to DHSC Ministers in a timely manner, as soon as these are known. DHSC Ministers will write to devolved administration Ministers to set out the policy proposals they endorse in order to build consensus on the direction to be taken in negotiations. Ministers from the devolved administrations will provide their responses to DHSC Ministers in a timely manner.

Agreement of Negotiating Mandate

- 3.6 All devolved administrations will have the opportunity to influence the overall objective and shape of the mandate, noting this may be subject to change. As at Stage 1 (Annex A), the devolved administrations will be sent copies of papers and be invited to meetings to build consensus on the negotiating mandate with regular informal and working level engagement between officials and Ministers to discuss policy proposals. Discussions between officials will be arranged with a frequency agreed with the devolved administrations and depending on the timeframes for negotiations.
- 3.7 DHSC will share draft mandate text with the devolved administrations for consultation and comment, prior to policy mandates going through cross UK Government write round and before publication. This will ensure appropriate consideration to the views of the devolved administrations and that the negotiation mandates are acceptable to all parts of the UK (Annex A - Stage 2).
- 3.8 The administrations agree to sharing their respective legislative requirements at an early stage in the policy development process to provide for a common understanding of what will be necessary for implementation of a UK-wide agreement, to ensure transparency and timely consideration to feed into negotiations. This will be discussed by policy officials with policy and legal teams providing assurance on necessary implementation steps.

4. Negotiations and Drafting of International Agreements

- 4.1 DHSC will consult the devolved administrations about the formulation of the UK Government's position for international reciprocal healthcare negotiations and any resulting deviations to the

mandate where this has, or may have, an impact on devolved responsibilities. In such cases the devolved administrations will be given early sight of evolving negotiating positions for consultation and comment in order to reflect the views of the devolved administrations in determining the approach for handling discussions. The devolved administrations will respond with any concerns in a timely manner.

4.2 Where there are deviations to the mandate DHSC officials will write to the devolved administrations setting out the deviations for their review and consideration where this has, or may, impact on devolved responsibilities. Concession requests will be considered at official level in the first instance, with advice being put to DHSC Ministers and devolved administration Ministers at the same time. DHSC will clearly identify where the views of the devolved administration Ministers are still pending and will ensure that the views of the devolved administration Ministers are represented to DHSC Ministers in a timely manner, as soon as these are known. Ministers from the devolved administrations will provide any comments in a timely manner. DHSC Ministers will consider any representations made and keep devolved administration Ministers informed of any decisions, again, in a timely manner.

4.3 DHSC will provide regular updates to the devolved administrations on the progress of negotiations including tracking documents and timelines (Annex A - Stage 3).

4.4 Once agreement with the third country has been reached in principle, advice will be provided to Ministers and the devolved administrations on the final agreement. The legal text is the final output of the negotiations and will be drafted to reflect the policy proposals as they are developed (Annex A - Stage 4). DHSC will seek to find consensus that the agreement reflects the policy position and assessment of implications and their suitability for implementation across the UK.

5. Ministerial Engagement

5.1 Engagement between Ministers may take place at any point throughout the consultation process set out in this Memorandum of Understanding upon request of any of the Ministers at DHSC or the devolved administrations. DHSC and the devolved administrations are committed to constructive and proportionate engagement with Ministers through the optimal engagement forum and commit to arranging ministerial discussions if required and desirable, coupled with formal written communications at key points on all negotiations.

6. Dispute Resolution

6.1 While the aim of this Memorandum of Understanding is to facilitate the consultation process on reciprocal healthcare agreements, there may be circumstances where agreement cannot be reached. All efforts should be made to resolve disputes in a timely manner through the following process where possible:

- i. In the first instance, concerns will be raised informally and at working level between policy officials. All officials should fully commit themselves to achieving agreement if possible.
- ii. Where officials cannot reach an agreement, the issue should be brought to the attention of more senior officials. Senior officials should make every effort to resolve the problem without the need for ministerial engagement.
- iii. If no agreement is reached at official level, concerns should be raised at ministerial level. The final escalation point will be to Ministers.

6.2 In the event that no resolution can be found, there will be an exchange of letters between Ministers. This would provide the opportunity for a devolved administration to set out its position, and for the Secretary of State to explain the reasons for the final position and how the UK Government has sought to reach agreement with the devolved administrations. If the Secretary of State decides to

proceed without resolution and guided by the principles set out in this Memorandum, the exchange of letters should be made available to both Houses of Parliament.

6.3 The process outlined above gives the administrations an opportunity to resolve disputes, but there is not a formal obligation to follow this process.

7. Confidentiality

7.1 Each administration will wish to ensure that the information it supplies to others is subject to appropriate safeguards in order to avoid prejudicing its interests. Complete confidentiality is often essential in matters touching on international relations and in formulating a UK policy position. The effectiveness of arrangements agreed under this Memorandum of Understanding will rely on mutual respect for the confidentiality of information exchange. The administrations accept that in certain circumstances a duty of confidence may arise and will between themselves respect legal requirements of confidentiality. Each administration can only expect to receive information if it treats such information with appropriate discretion and not share anything publicly without agreement of all parties.

7.2 There will also be a common approach to the classification and handling of sensitive material. Information will be shared at the appropriate classification level decided by the administration providing the information. Each administration will treat information which it receives in accordance with the restrictions specified. In the event that an administration is subject to a legal obligation to disclose information, for example a freedom of information request, the administrations will consult each other and assist the administrations in complying with their legal obligations.

C. CONSULTATION PROCESS - IMPLEMENTATION AND REVIEW

8. Regulations under HIAA

8.1 In line with the principles set out above, it is necessary to ensure a transparent and consistent engagement process between DHSC and the devolved administrations to support the making of regulations under section 2 and 2A of HIAA.

8.2 Meetings will be held as early as possible during the process set out in Section B to agree how international obligations in areas of devolved competence should be implemented. This might include Ministers in the devolved administrations making regulations or alternatively the Secretary of State making regulations on behalf of the devolved administrations.

8.3 The devolved administrations will notify DHSC how they wish to proceed in a timely manner to ensure obligations can be implemented by any agreed deadline. DHSC do not intend to exercise section 2 powers in areas of devolved competence without the agreement of the relevant devolved administrations.

8.4 When making regulations in areas of devolved competence, officials and Ministers agree to share information, including draft regulations and proposed timetables, to ensure obligations in international agreements are implemented coherently and on time. The timetable for delivery of the regulations will be agreed in advance with the devolved administrations. The devolved administrations will notify the UK Government and each other of any potential impacts on the delivery timetable for example, minimum notification periods, legislative process/protocol and translation requirements. Drafted regulations will be shared in a timely manner to provide an opportunity for consideration and comment. Engagement must be as early as possible to allow time for ministerial and Parliamentary consideration. Officials will collectively agree when to share a draft of the regulations to which HIAA applies with their respective Ministers.

8.5 If the UK Government has concerns about the implementation of international obligations, or the devolved administrations fail to make regulations within the agreed timeframe, or in the event that

agreement on the regulations cannot be reached, the process set out above (6. Dispute Resolution) will be followed. If no resolution is found, there will be an exchange of letters between Ministers. This would provide the opportunity for a devolved administration to set out its position, and for the Secretary of State to explain the reasons for the final form of the regulations and how the UK Government has sought to reach agreement. If the Secretary of State decides to proceed without resolution and guided by the principles set out in this Memorandum, the exchange of letters should be made available to both Houses of Parliament.

9. Operational Implementation

9.1 Before an agreement comes into force the administrations should demonstrate operational and communication readiness. Officials from all administrations commit to consult on and set out a timescale for implementation.

9.2 DHSC and the devolved administrations will ensure a cooperative and coordinated approach to the operational implementation of reciprocal healthcare policy that works for all parts of the UK. This may for example include developing and coordinating bespoke packages of communications to inform individuals and healthcare providers about new reciprocal healthcare agreements.

9.3 All four administrations will work together, where appropriate, on matters of mutual interest to provide the most effective outcomes for citizens of the UK and promote equity of treatment across the UK. Various public bodies deal with reciprocal healthcare matters within the responsibilities both of the UK Government and the devolved administrations. The UK Government and devolved administrations affirm their commitment to work together, where appropriate, to ensure that such bodies continue to operate effectively.

10. Review

10.1 This Memorandum of Understanding will be reviewed no later than 24 months after the date it is agreed, with any subsequent reviews to be scheduled in the course of the review. This review will be conducted by officials and agreed by Ministers.

10.2 The administrations recognise that there may be a need from time to time for some adjustment to be made to the Memorandum of Understanding, for example, in response to new issues or in the light of any changes to concordats and bilateral relations more generally. The administrations agree that there should be mechanisms in place to review the operation of the settlements and for adjustments to be agreed.

D. DATA SHARING

To support ongoing collaboration between all parts of the UK, a separate Memorandum of Understanding will cover data sharing.

E. SIGNATORIES

Minister of State for Health, UK Government

Minister for Health and Social Services, Welsh Government

Minister of Health, Northern Ireland Department of Health

ANNEX A

Reciprocal Healthcare International Negotiations Process Map

Reciprocal Healthcare International Negotiations Process Map

