

Eluned Morgan MS
Minister for Health and Social Services

15 May 2023

Dear Eluned

Healthcare (International Arrangements) (EU Exit) Regulations 2023

At our meeting on 2 May 2023 we considered your letter of 25 April in which you advised my Committee that the UK Government intends to make and lay the Healthcare (International Arrangements) (EU Exit) Regulations 2023 (the HIA Regulations) in early June.

We noted that the HIA Regulations will extend to the whole of the UK and that they 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 (the HEEASA Regulations), which are made in relation to the provision of reciprocal healthcare in European Economic Area (EEA) states and Switzerland.

We have a number of questions to ask you on the HIA Regulations. I would be grateful to receive a response to the questions set out in the Annex by 31 May.

I am copying this letter to the Health and Social Care Committee.

Yours sincerely,



Huw Irranca-Davies
Chair

ANNEX

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?

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”.

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.

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

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”.