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Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol
Cabinet Secretary for Health and Social Care



Llywodraeth Cymru
Welsh Government

Sarah Murphy MS
Chair
Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

14 May 2024

Dear Sarah

Thank you for your letter of 30 April 2024 about the Legislative Consent Memorandum for the UK Tobacco and Vapes Bill, which is currently progressing through the UK Parliament. The Legislative Consent Memorandum on this Bill was laid on 9 May.

As you highlight, the intention to legislate in this area was announced by the Prime Minister at the Conservative Party Conference on 4 October. At that time, there had been no discussions with the Welsh Government about the proposed legislation.

The then Deputy Minister for Mental Health and Wellbeing met the Parliamentary Under Secretary of State for Primary Care and Public Health on 6 October for an initial discussion about the proposals. During that meeting, the Deputy Minister confirmed her agreement in principle to undertaking a joint, UK-wide consultation about measures to create a smokefree generation and to tackle youth vaping, subject to officials' review of the consultation paper. As the consultation was launched on 12 October, my officials worked swiftly to ensure the Welsh position was accurately reflected in the consultation documents and to support the provision of the consultation document in Welsh.

On 7 November, in the King's Speech, the UK Government announced its intention to introduce the Tobacco and Vapes Bill in the fourth session of Parliament. The Parliamentary Under Secretary of State for Primary Care and Public Health wrote to me on 22 November requesting my view on the proposed Bill applying to Wales. The Deputy Minister for Mental Health and Wellbeing responded on 24 November that she was willing to indicate in principle that the Tobacco and Vaping Bill should apply to Wales and confirmed that Welsh Government officials would continue to work closely with officials in the Department of Health and Social Care on the detail of the provisions and their application to Wales. Following the consultation, my officials supported the process of analysing the responses and we have worked with the other UK nations to develop the policy and legislative proposals, including the development of the consultation response document. On 12

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

January 2024, the Deputy Minister for Mental Health and Wellbeing wrote to the Parliamentary Under Secretary of State for Primary Care and Public Health to confirm her agreement for the consultation outcome document to set out the policy direction in relation to Wales. This [document](#) was published on 29 January by the UK Government and the Deputy Minister for Mental Health and Wellbeing issued a [Written Statement](#) to update Members.

A meeting attended by Ministers and representatives of the four nations was held on 17 January to discuss the development of the Bill. UK Government officials shared drafts of their policy documents and draft Bill clauses as they were being developed for my officials to provide their views during the development of the provisions. My officials also attended regular weekly meeting with officials from the other UK nations to discuss policy issues and the Bill's development.

The Deputy Minister for Mental Health and Wellbeing reviewed and noted a draft version of the Bill on 12 February. On 18 March, the Parliamentary Under Secretary of State for Primary Care and Public Health wrote to the Deputy Minister for Mental Health and Wellbeing to inform her the Bill would be introduced on 20 March, enclosing a further draft version of the Bill. The Deputy Minister for Mental Health and Wellbeing responded on 19 March.

The United Kingdom Internal Market Act 2020 was one of the considerations why it would be appropriate to adopt a four-nations approach to the UK Tobacco and Vapes Bill, however the overriding consideration was public health benefit. Our decision to engage in this Bill is because, if passed, it represents one of the most significant public health interventions in a generation. This is a view shared by many stakeholders during the Bill's recent Committee evidence sessions.

The decision to work jointly was taken early on during the process because all governments could see clear benefits to public health from a united approach. Given that the Bill was planned for the fourth Parliamentary session, the Bill also provided an opportunity to respond swiftly to pressing public health issues and protect children and young people from nicotine addiction.

You also asked what discussions we had with the UK Government about the level of detail on the face of the Bill, and the scope and procedure for the delegated powers. In conjunction with our colleagues across the UK, we have been engaged with the UK Government on these issues and consider that the right balance has been struck on this occasion between the need to give due and proper scrutiny to the provisions on the face of the Bill and the need to retain flexibility, in particular, to respond to the rapidly evolving vaping industry. The approach in relation to the delegated powers provided for in the Bill was discussed during the meeting on 17 January.

The Deputy Minister for Mental Health and Wellbeing made clear her position that for the most part, any powers in the Bill that are to lie with the Secretary of State, that are within Welsh devolved competence (for example those in Part 4 of the Bill, regulating the product requirements of tobacco and vaping products) should only be made with the consent of the Welsh Ministers (see Clause 67(a)). Whilst we recognise the need for some regulations to be made on a UK-wide basis for reasons of coherence and consistency, it was considered essential that Welsh Government officials are involved in the development of the regulations to ensure they take account of the Welsh policy position and perspective. I am pleased to see this approach has been adopted in the Bill.

I welcome the provisions in the Bill that give the Welsh Ministers the power to make regulations to deal with specific Welsh circumstances, as the need arises (for example to regulate retail displays for vapes and other nicotine products in Wales). I am also content the procedure attached to each of the delegated powers in the Bill is appropriate and ensures the provisions are sufficiently scrutinised.

All powers delegated to the Welsh Ministers in the Bill will be subject to Senedd scrutiny in line with our procedures.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Cabinet Secretary for Health and Social Care

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