Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol | External Affairs and Additional Legislation Committee
Gwydnwch a pharodrwydd: ymateb gweinyddol ac ariannol Llywodraeth Cymru i Brexit | Resilience and preparedness: the Welsh Government's administrative and financial response to Brexit
EAAL(5) RPB01
Ymateb gan Cydffederasiwn GIG Cymru | Evidence from Welsh NHS Confederation

Introduction

1. The Welsh NHS Confederation, which represents the seven Health Boards and three NHS Trusts in Wales, welcomes the opportunity to provide information to the External Affairs and Additional Legislation Committee inquiry into resilience and preparedness: The Welsh Government's administrative and financial response to Brexit.

2. The implications of Brexit remain unclear, but it is likely that the impact will be felt across the NHS. More specifically, Brexit could have implications for the commissioning, provision and development of healthcare interventions across the UK given the extent to which EU policy and legislation impact on all aspects of the NHS.

3. The Welsh NHS Confederation, on behalf of our members, is highlighting the possible implications of Brexit on NHS Wales with the Welsh Government, Assembly Members and our stakeholders. In addition, as a member of the Cavendish Coalition and the Brexit Health Alliance, we are ensuring that the impact for Wales is made clear at a UK level by highlighting the likely effects on Welsh policy and legislation.

Summary

4. The Brexit negotiations have only recently started so it is difficult to be specific on the measures which should be put in place to mitigate risks and to take advantage of opportunities. That said, the implications of a UK withdrawal from the EU are anticipated to affect all parts of the health care system.

a. Many aspects of UK health and social care services have been influenced by European Union policies and legislation. Depending on the settlement, the UK's exit from the EU could have a profound impact on the UK economy and the delivery of public services.
b. From a NHS perspective, possible implications on workforce, research and innovation, and health technology regulation are priority issues which must be considered carefully during the withdrawal negotiations. Another key area is infrastructure, including the road network, because this can impact on ambulance response times and the transportation of vital medicines across borders.
c. On workforce, while the UK Government has now given some reassurance that EU nationals can remain in the UK post-Brexit, our priority will be to ensure a continuing 'pipeline' of staff for the sector, including recognising health and social care as a priority sector for overseas recruitment. We continue to ask the UK Government to provide clarification that EU professionals who are already working for the NHS across the UK, or who will be recruited during the leave negotiations, will be allowed to remain after Brexit.
d. On research and innovation, our aim is that NHS organisations across the UK will be able to continue to participate in EU collaborative programmes and lead and contribute positively to European Reference Networks post-Brexit.
e. On health technology regulation, our priority is that NHS patients will continue to benefit from early access to the wide range of innovative health technologies available on the EU market and ensure that they do not miss out on the opportunities offered by participation in EU clinical trials.
f. Alongside these priorities, we have identified public health, employment law and crossborder healthcare as other areas in which risks or opportunities emerging from Brexit should also be considered.

Welsh Government

5. With negotiations ongoing, we appreciate the difficulties that the Welsh Government faces. Across devolved areas that the Welsh Government has legislative competence, the Brexit negotiations could have a significant impact on thousands of policies, regulations, directives and legislation, including areas relating to health and care. The NHS in Wales continues to liaise with the Welsh Government to raise awareness and provide feedback on the key areas highlighted below.

6. In relation to structured engagement with the NHS, there is a standing verbal item on the Welsh Partnership Forum[i] relating to Brexit. This is a quarterly opportunity for colleagues to share information and raise issues relating to Brexit.

Budget

7. The annual funding of the NHS depends on the performance of the economy. It is a concern therefore that leading economists have suggested that Brexit could lead to an economic downturn. The Health Foundation has previously estimated that the NHS budget in England could be £2.8 billion lower than currently planned by 2019-20.[ii] In the longer term, the analysis concludes that the NHS funding shortfall could be at least £19 billion by 2030-31- equivalent to £365 million a week – assuming the UK is able to join the European Economic Area. If this is not the case, the shortfall will potentially be as high as £28 billion – which is £540 million a week. The repercussions will be felt by NHS Wales.

Workforce

8. Across the UK, the NHS is heavily reliant on EU workers. While the UK Government has given some reassurance that EU nationals can remain in the UK, we believe the priority must be to ensure that the UK can continue to recruit and retain much needed health and social care staff from the EU and beyond, whilst increasing the domestic supply.

9. In July 2017, 1,388 individuals directly employed by the NHS in Wales identified themselves as EU Nationals (1.55% of the total) on the Electronic staff record. As the table below shows there has been a 6% increase in the number of employees identifying as EU nationals since July 2016, but it is not it is too soon to tell if this represents an identifiable trend. It is also important to note that around 35,000 staff have not recorded any nationality on the staff record.

Number of directly employed staff identifying as EU National	**September 2016**	**% of total directly employed workforce**	**July 2017**	**% of total directly employed workforce**
Add Prof Scientific and Technic	49	1.65%	54	1.77%
Additional Clinical Services	162	0.91%	189	1.04%
Administrative and Clerical	95	0.54%	95	0.51%
Allied Health Professionals	110	1.80%	120	1.96%
Estates and Ancillary	104	1.21%	112	1.30%
Healthcare Scientists	31	1.52%	30	1.47%
Medical and Dental	410	5.84%	435	5.99%
Nursing and Midwifery Registered	352	1.38%	353	1.38%
NHS Wales	**1,313**	**1.50%**	**1,388**	**1.55%**

10. While the number EU citizens within the whole Welsh NHS workforce are relatively small, there are some key points to note:
    a. The highest concentration of EU staff appears to be in medical and dental workforce accounting for around 6%;
    b. There is a differential distribution of staff across Wales with higher concentration of EU nationals working in health boards with the greatest recruitment challenges (i.e. Hywel Dda University Health Board and Betsi Cadwaladr University Health Board);
    c. The current uncertainty around the EU negotiations may lead to staff looking for opportunities outside the UK and for potential applicants to be deterred from applying;
    d. Incidents of harassment of foreign workers and cases of EU nationals feeling that they are no longer welcome in the UK may have an impact on EU/EEA workers' willingness to remain in the UK, even if permanent freedom to remain is granted. One of the present impacts of the EU Referendum has been the sharp rise in cases of 'hate incidents' and intolerance towards foreign citizens, some of which have been directed against NHS employees. A number of Health Boards in Wales have expressed their views publicly about supporting their workforce and that hate crime will not be tolerated.

11. While we welcome the recent announcement that more healthcare professionals will be trained domestically, workforce planning is not an exact science and it is extremely difficult to predict accurately the number of professionals that will be needed in the future to ensure the smooth and safe operation of the health and care system. Shortages in specific areas can take 2-3 years to develop, but may need 10-15 years for the trained workforce to adapt, by which time other solutions have usually been found and different workforce shortages may have emerged. In addition, many healthcare systems across the world compete for healthcare specialists and the UK is not immune from home grown professionals leaving the NHS to work overseas. It is to be expected, therefore, that our sector will need to continue to recruit overseas trained professionals,

including from within the European single market, to operate smoothly and to offer safe and high-quality services to patients in the future.

12. We are disappointed that the UK Government has stated that it is their position to leave the EU single market and custom union without setting out future immigration rules. The freedom of movement provisions of the EU single market makes it possible for healthcare professionals qualified in other parts of the EEA to access the UK employment market without having to obtain visas and work permits, unlike citizens from non-EU countries. This makes it quicker and easier for the NHS to recruit staff from the EU, especially into shortage areas and specialties. The UK benefits enormously from the single market in this respect, as we are a net importer of healthcare professionals qualified in other parts of the EU.

13. In addition, the EU legislation on mutual recognition of qualifications means that currently many EU healthcare professionals are “fast-tracked” for registration with the General Medical Council, the Nursing Midwifery Council or other relevant regulatory bodies. EU rules mean that the process for professional registration and the right to practise legally in the UK is different to nonEEA trained practitioners; for example, it does not systematically require pre-registration competency and language testing by the regulator. These arrangements are reciprocal so that UK-qualified practitioners can also practise relatively easily elsewhere in the EU, although the outbound flow is less.

14. Our priority in NHS Wales will be to ensure a continuing ‘pipeline’ of staff for the sector. The immigration system that is in place after the UK leaves the EU will need to ensure that, alongside our domestic workforce strategy, it supports the ability of our sector to provide the best care to our communities and people who use our services.

15. A total exit from the single market, as put forward by the UK Government, will leave the UK completely free to determine its own policies on immigration, with possibly much greater implications for the UK NHS. Under this scenario, it

would be crucial to ensure that any future UK immigration rules recognise health and social care as a priority sector for overseas recruitment, from both within and outside the EU.

Employment law

16. A substantial proportion of UK employment law originates from the EU and provides important protections for nurses, social care and health staff; in particular, rules on health and safety at work, information and consultation on collective redundancies and safeguarding employment rights in the event of transfers of undertakings (TUPE).

17. The UK Government has already stated its intention to protect workers' rights after Brexit and, as the largest employer in the country, we very much welcome this. The EU's key health and safety related directives provide a legal framework for employers to reduce the risks of stress, violence, musculoskeletal disorders (MSDs), biological hazards, stress and violence to health and social care staff. MSDs and stress are particularly prevalent in the nursing workforce and the main cause of sickness absence in the sector and, arguably, without the directives the situation would be worse. The implementation of hoists and other lifting equipment, as required by the Manual Handling Directive, has been proven to significantly reduce the risks for social care and health staff and the people they care for.[iiiiv]

Research and innovation

18. Clinical research and innovation are key components of NHS activity across the UK and the NHS has a long tradition of EU collaborative research. Subsequent EU Research and Innovation funding programmes have acted as catalysts for this collaborative work, filling gaps in the research pipeline, and allowing researchers across Europe to gather forces to find responses to common

challenges, both at clinical and operational levels, that confront health systems in Europe.

19. European programmes have, for example, supported research into health economics and the resilience of healthcare systems, for the public good. At the bottom line, the NHS across the UK wants to access research which brings affordable innovation and, most importantly, benefits to NHS patients. This is not possible, at least to the same extent, through participation in collaborative research with other regions of the world, such as the USA, where commercial interests are often the key driver of research.

20. EU research grants have also been crucial for the Welsh NHS' ability to attract and retain some of the most renowned clinicians in the world, who often decide to work for the NHS due to its excellent reputation in leading EU collaborative medical research initiatives, including through the EU research programme Horizon 2020.

21. Collaboration at EU level has helped the NHS across the UK to develop new treatments, adopt innovation more quickly, and improve the quality of healthcare it provides. We would like to ensure that the NHS can continue to participate in EU collaborative research programmes post Brexit. It is important that Brexit does not impact on cross-European partnerships, exchange of good practice and mutual training opportunities, for example staff or student exchange, sharing and learning from best practices and successful policies.

Regulation of health technologies

22. The integrated nature of supply chains for medicines across Europe and the shared regulatory framework, mean that Brexit may have a negative impact on the supply, regulation and safety monitoring of medicines for patients in all EU 27 countries. Continued co-operation and alignment between the EU and the

UK on the regulation of medicines is the best outcome for patients across Europe.

23. The EU has competence to regulate health technologies, such as pharmaceuticals and medical devices, but also products of human origin such as blood, tissues and cells. This is because these products circulate in the EU single market and therefore a set of common standards and rules are needed to ensure their safety and quality.

24. The pharmaceutical industry is one of the EU's most important and fastest-growing industries, investing an estimated €35 billion in Research and Development (R&D) in Europe and directly employing around 745,000 people[v]. The UK is a key player in European pharmaceuticals, constituting 10% of the EU's total production and contributing approximately 20% of the EU's total R&D. Between January and October 2016, €11 billion of EU pharmaceutical imports originated from the UK providing medicines to patients across Europe while EU pharmaceutical exports to the UK totalled €17 billion. In Wales, the life sciences sector employs around 11,000 people[vi] based at more than 350 companies and has a turnover of circa £2 billion per year. These include companies in the ground-breaking fields of medical technology – biopharmaceuticals, regenerative medicine, diagnostics, e-health and biotechnology. Recognising this inherent strength and potential, the Welsh Government has established initiatives such as the Life Sciences Hub[vii] and Life Sciences Research Network Wales[viii] to ensure ongoing development of the sector in Wales, which is expected to deliver significant (over £1 billion) economic impact by 2022.

25. Having a single EU regulatory framework has allowed new health technologies to be brought more quickly to the market for the benefit of patients. For example, pharmaceutical companies can make new medicines available everywhere in the EU through the single centralised marketing authorisation procedure provided by the European Medicine Agency, instead of having to apply for authorisation in each individual member state. Maintaining access to

this centralised authorisation procedure is the main priority for the UK pharmaceutical/life sciences industry.

26. A single EU system has also allowed a higher level of patient safety and public health protection to be achieved through a close-knit network of competent authorities in member states and the European Medicines Agency, collaborating, exchanging information, and bringing their expertise to the table in a way that adds value, whilst avoiding duplication of effort.

27. The EU regulatory framework spans the full process needed to bring new health technologies to the market, starting from the clinical research phase. It is for this reason that the authorisation and conduct of clinical trials are also regulated by the EU. This is particularly relevant from an NHS perspective, given the vast number of clinical studies conducted by the NHS.

28. The EU and the UK should agree to focus on solving the issues around medicines as early as possible during the negotiations. Appropriate transitional arrangements need to be put in place to ensure that European patients can continue to access their medicines without disruption. In the event that the UK continues to have full access to the single market, the EU medical regulatory framework will continue to apply and any change would be minimal. At the other extreme, an exit from the single market would leave the UK free to determine its own medical regulation, with possibly much greater implications for the NHS. Under such a 'hard Brexit' scenario, it will be essential to ensure that our patients continue to benefit from early access to the wide range of innovative health technologies which are available on the EU market.

Cross-border healthcare

29. As the right to receive healthcare in another EU country is regulated by the EU, leaving the EU may have consequences for NHS patients in terms of their ability to access cross- border healthcare. This could mean that, in the future, British

citizens on holiday in Europe might no longer be able to use the European Health Insurance Card, which allows them to receive emergency or immediately necessary healthcare on the same terms as the residents of that country.

30. EU law also allows Britons who are abroad for a longer period of time – such as pensioners living abroad, or UK citizens who work in another EU country – to be entitled to receive healthcare in the country where they live on the same basis as the local population. It should be stressed that these rules are reciprocal and therefore uncertainty also exists on whether EU citizens will be entitled to receive healthcare in the UK following Brexit.

31. If the UK were to leave the EU single market, these systems would in principle no longer apply, unless bilateral agreements were negotiated. Consideration should be given by negotiators to possible implications for patients and how to ensure that a fair alternative system is put in place, either with the EU as a whole, or with those EU countries, such as Spain, which have high numbers of UK nationals living there.

Public health

32. A significant proportion of the domestic legislation in public health and consumer protection originates from the EU, as the EU has legislative competence in these areas. If EU rules were no longer enforceable in the UK after we leave the EU, we would recommend ensuring the same, or higher, level of safety is guaranteed through domestic standards and regulations thereafter.

33. EU legislation surrounding emission controls have been successful in reducing pollution levels across both road traffic and industry, while the Commission has also shown a willingness to enforce directives in many areas including water quality and the sale and marketing of tobacco products.

34. The issue of smoking may also be affected, as the EU has a significant role in ensuring a cross border approach to anti-smoking measures. The Tobacco Products Directive, having survived a number of High Court challenges, is now in the process of implementation.

35. Furthermore, the EU has several mechanisms to respond to and combat major cross-border health threats, including communicable disease outbreaks. This has allowed considerable improvement in the degree of information sharing and response co-ordination on an EU level in cases such as Ebola and swine flu pandemics. Continued access to these EU coordination mechanisms and networks, such as the European Centre for Disease Prevention and Control (ECDC), should be sought during the negotiations, as it would be more difficult for the UK to tackle in isolation what are inherently transnational threats.

Food Regulation

36. While not directly linked to the NHS, food regulation can impact on public health initiatives surrounding food hygiene, obesity and healthy eating. With EU regulation, such as EU General Food Laws which seek to protect human health and consumers' interest in relation to food, the future of the UK's own food standards measures is currently unknown. The UK Government is yet to have come forward with its plan for a replacement to this regulation. The Government could simply copy EU regulations in this area, resulting in no change to current rules. On the other hand, the UK Government could use this opportunity to amend the regulation, possibly lowering the standards to open up our market to new trade partners.

37. With the EU likely to continue to be an important export market for the UK after Brexit is complete, exporting companies will look to continue to maintain their manufacturing standards at the EU approved level. Food manufactured for the UK market and food products coming into the UK market might not have to abide by the rigours EU standards though, if the regulation is not carried across

into UK law. Consumers could therefore start to see a decline in the standard of their weekly food shop.

38. Finally, the withdrawing from the EU legal framework on food could potentially offer opportunities. EU law in this area has been considered, on some occasions, to be too conservative and not going far enough to help consumers make healthy choices.

Cavendish Coalition and Brexit Health Alliance

39. The Welsh NHS Confederation has been highlighting the possible implications for the Welsh NHS of Britain exiting the EU with the Welsh Government, but also to the UK Government through being a proactive member of the Cavendish Coalition and the Brexit Health Alliance.

40. The Cavendish Coalition is made up of 36 health and social care organisations[ix] united in their commitment to provide the best care to their communities, patients and residents. The coalition recognises that the talented and diverse group of people we all employ and represent are central to the success of that commitment, and that these individuals from the UK, Europe and across the world make a vital contribution to delivering care to the UK's population. We are committed to working together to ensure a continued domestic and international pipeline of high calibre professionals and trainees in health and social care in the future.

41. The Brexit Health Alliance[x] brings together the NHS, medical research, industry, patients and public health organisations. The Alliance seeks to make sure that issues such as healthcare research, access to technologies and treatment of patients are given the prominence and attention they deserve during the Brexit negotiations, and will argue that it is in both Europe and the UK's interests to maintain co-operation in research and in handling public health issues. It calls on the UK government to make sure there is a commitment to medical research

and providing alternative funding, and that UK citizens' right to receive healthcare in EU countries is preserved. The areas that the Alliance focuses on includes:

a. Supporting maximum levels of research and innovation collaboration;
b. Ensuring regulatory alignment for the benefit of patients and the public's health;
c. Preserving reciprocal healthcare arrangements;
d. Ensuring robust coordination mechanisms on public health and well-being; and
e. Securing a strong funding commitment to the health sector and the public's health.

How to mitigate risks and take advantage of opportunities

42. At this stage of the negotiation process, we have the following main recommendations:

a. If the UK were no longer to be part of the EU Customs Union and could therefore embark in the negotiation of trade deals with different economic regions across the globe, particular care would need to be paid to respective public health policies and standards applied, as other trade blocks will be pushing for mutual recognition of their standards, which could be set at a lower level of safety compared to the EU's. International free trade deals are very complex and take time to negotiate. While we recognise the UK Government may wish to agree deals quickly, for each trade pact it will also be crucial to ensure a high level of public health protection by conducting an in-depth analysis of the standards applicable to each individual economic sector and ensuring that, whenever deemed necessary, reservations are agreed with our counterpart.

b. Given the complexity of negotiations and the variety of policy areas that will be covered, we strongly recommend that organisations with specific expertise and knowledge in these respective areas are consulted by the UK Government and Welsh Government when drawing up the detailed approach to particular issues. This will allow a well-informed negotiating position to be shaped and avoid the risk that some of the implications could be overlooked.

c. To reduce uncertainty in the run up and during the negotiations, whenever possible clarification should be provided by the UK Government. For example, the clarification given by the Treasury Office on EU funding programmes has been extremely helpful in reassuring our EU funding partners that it is safe to involve UK organisations in new funding bids. Similar clarification in other areas will be very welcome.

Conclusion

43. The Welsh NHS Confederation will continue to highlight the possible implications for the Welsh NHS of Britain exiting the European Union with the Welsh Government and Assembly Members but also to the UK Government as part of the Cavendish Coalition and the Brexit Health Alliance.

References

[i] The WPF is a tripartite forum with representatives from the Welsh Government, NHS Employers and Trade Unions. [ii] Health Foundation, July 2016, NHS Finances Outside the EU

[iii] Health and Safety Executive (2002) Second Evaluation of the Manual Handling Regulations (1992) and Guidance. HSE Books: Sudbury

[iv] Health and Safety Executive (2003) Evaluation of the implementation of the use of work equipment directive and the amending directive to the use of work equipment in the UK. HSE Books: Sudbury [v] European Federation of Pharmaceutical Industries and Associations (2017), 'The Pharmaceutical Industry in Figures', p.4.

[vi] http://gov.wales/topics/businessandeconomy/sectors/life-sciences-sector/?lang=en [vii] https://www.lifescienceshubwales.com/ [viii] http://www.lsrnw.ac.uk/

[ix] Members of the Cavendish Coalition: Association of Dental Groups, Association of Directors of Adult Social Services, Association of Independent Healthcare Organisations, Academy of Medical Royal Colleges,
Association for Real Change, Association of UK University Hospitals, British Dental Association, British Medical
Association, Care England, Care Forum Wales, Care and Support Alliance, Chartered Society of Physiotherapy,
Council of Deans of Health, Mental Health Network, National Association of Primary Care, National Care
Association, National Care Forum, Vic Rayner, New NHS Alliance, NHS Clinical Commissioners, NHS Confederation, NHS Employers, NHS European Office, NHS Partners Network, NHS Providers, Northern Ireland
Confederation for Health and Social Care, Registered Nursing Home Association, Royal College of Nursing,
Shelford Group, Skills for Care, Skills for Health, The Companys Chemists' Association, The Royal College of Midwives, The Welsh NHS Confederation, Vanessa Young, Director, UNISON, United Kingdom Homecare Association and Voluntary Organisations Disability Group.

[x] Brexit Health Alliance founding members: Academy of Medical Royal Colleges, Association of Medical Research Charities, Association of British Healthcare Industries, The Association of the British Pharmaceutical
Industry, Association of UK University Hospitals, Bio Industry Association, Faculty of Public Health, Medical
Schools Council, National Voices, NHS Confederation (including Mental Health Network, NHS Clinical
Commissioners, NHS Employers, NHS Partners Network), NHS Providers, Northern Ireland Confederation,
Richmond Group of Charities, Scottish NHS Chief Executive Group and Welsh NHS Confederation