



Ein cyf/Our ref: MA-L/VG/0167/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

12 February 2019

Dear Mick,

The Welsh Government's Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill

I am writing to thank you for the Committee's consideration and recent report on the *Legislative Consent Memorandum: Healthcare (International Arrangements) Bill* and update you on recent developments.

I am grateful to the Committee for its report and have carefully considered the recommendations of the Committee. I have included a response to the recommendations individually in the annex to this letter.

As I stated in my evidence session, officials from UK Government and the Devolved Administrations have been working towards a Memorandum of Understanding which would set out how the Devolved Administrations will be involved in the development of future healthcare agreements.

The Minister of State for Health wrote to me on 7 February to formally offer to amend the Bill to place a statutory duty on the UK Government to consult the DAs where regulations under clause 2 of the Bill would be within the DAs legislative competence. This would be underpinned by an accompanying Memorandum of Understanding. The MoU delivers a number of assurances that I have been clear from the outset would be required. Welsh Government would be involved in the policy development of future arrangements from the outset, with the MoU stating that all parties will seek to proceed on the basis of consensus. Draft agreements would be discussed with DAs before they are shared with third countries and Welsh Ministers would be consulted on the content and drafting of regulations made under clause 2 of the Bill where they relate to devolved matters.

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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.

This agreement goes a long way to creating a positive framework where the future of reciprocal healthcare arrangements can be discussed on a collaborative basis. As I said during my evidence session, it was always more important to be meaningfully involved in the development of healthcare agreements than to hold a veto on the final regulations which give effect to those agreements. However, I have set out to UK Government that I would like to see further assurance on the role of Welsh Ministers in agreeing regulations to be made under Clause 2 of the Bill. I have asked that these regulations would not normally be made without the agreement of Devolved Administrations, and that in cases where agreement cannot be reached that an exchange of Ministerial letters would be made available to both Houses of Parliament.

I have been clear in correspondence with UK Government that any statutory instrument which amends Welsh primary legislation would of course be subject to a Statutory Instrument Consent Memorandum in the Assembly, and it would be for the National Assembly for Wales to decide whether to recommend that consent be given in that circumstance.

I have indicated to the Minister of State to Health that I would be willing to recommend consent to the Bill on the basis that my proposed changes to the MoU are agreed. I am sharing the draft MoU with you now, and will lay a supplementary Legislative Consent Memorandum when agreement with UK Government has been reached. Unfortunately there is now very little time before the bill completes its progress in Parliament and receives Royal Assent before Exit Day. As negotiations with the UK Government are ongoing we will need to move swiftly to hold a plenary debate on the LCM. I am sending this letter in advance of the full supplementary consent memorandum being laid, to provide you with the earliest notice of the progress made.

I hope you find this update useful and I would be happy to provide any further information if it would be helpful.

I am grateful to the Committee for its work on this matter.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, slightly slanted style.

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

**Welsh Government Response to the Constitutional and Legislative Affairs Committee
Report of January 2019 on *The Welsh Government's Legislative Consent
Memorandum on the Healthcare (International Arrangements) Bill***

CLAC Recommendation	Welsh Government Response
<p>Recommendation 1. The Minister should pursue, with the UK Government, an amendment to the Bill that requires the UK Ministers to seek the consent of the Welsh Ministers before exercising the functions of the Welsh Ministers in devolved areas.</p>	<p>REJECT.</p> <p>I have carefully considered the views of this Committee, and also those in the report from Health, Social Care and Sport Committee. I still consider that the most productive path forward, which will give Welsh Government the greatest influence over healthcare arrangements, is to be involved at an early stage of policy development when UK policy can be meaningfully impacted. This would be achieved by an amendment to place a statutory duty on the UK Government to consult the DAs where regulations under clause 2 of the Bill would be within the DAs legislative competence, underpinned by an accompanying Memorandum of Understanding.</p> <p>Welsh Government does not wish to act as a blocker to reciprocal healthcare arrangements. There has been broad agreement that these healthcare agreements are a positive thing that we would wish to see continue. A requirement to seek consent would only give Welsh Government a veto over final regulations; it would not necessarily lead to meaningful engagement.</p> <p>My officials have been engaged with those from UK Government and the other devolved administrations to draft a memorandum of understanding which provides the necessary assurances and builds a positive platform for future discussions. I consider that there has been considerable progress in the development of this memorandum and remain confident that a document agreeable to all parties will be agreed.</p>
<p>Recommendation 2. The Minister should keep the Committee updated with progress on the amendments he is seeking in respect of clause 2 of the Bill</p>	<p>AGREE.</p>

<p>and notify the Committee when agreement has been reached.</p>	
<p>Recommendation 3. If a UK Minister is seeking to exercise the functions of the Welsh Ministers in devolved areas, the Welsh Ministers must:</p> <ul style="list-style-type: none"> ▪ having made a decision on consent, lay a written statement notifying the National Assembly that it has either provided consent, or, refused to do so; ▪ include in that written statement, the reasons for the decision taken and if consent is given, information about the nature and terms of that consent. 	<p>REJECT. As I have set out in my response to recommendation 1, I am content that the Bill be amended to include a statutory duty to consult Welsh Government, should this be accompanied by an appropriate Memorandum of Understanding.</p>
<p>Recommendation 4. The Minister should pursue, with the UK Government, an amendment to the Bill that requires that all regulations made under clause 2 are subject to the affirmative procedure.</p>	<p>AGREE. My officials have continued to make representation to UK Government that regulations made under clause 2 should be subject to the affirmative procedure. I am aware that this issue has been raised throughout Parliamentary scrutiny of the legislation and would expect to see some amendment in this respect.</p>
<p>Recommendation 5. The Minister should write to the Committee providing a guarantee that the Welsh Government will:</p> <ul style="list-style-type: none"> ▪ table a statutory instrument consent motion under Standing Order 30A.10, in circumstances where a statutory instrument consent memorandum is laid in accordance with Standing Order 30A.2 (in respect of a statutory instrument laid before the UK Parliament under the provisions of the Bill, if enacted). ▪ notify the National Assembly by written statement in circumstances where the UK Government engages paragraph 109 of its <i>Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales</i> in relation to statutory instruments amending primary legislation for which the National Assembly has legislative competence. 	<p>ACCEPT IN PART</p> <p>The Welsh Government agrees that it will notify the Assembly in circumstances where it is made aware that, on the basis of paragraph 109 of the DGN, the UK Government has not sought or will not seek the Assembly's consent in relation to SIs amending primary legislation for which the Assembly has legislative competence.</p> <p>The Welsh Government is fully committed to meeting its obligations under Standing Orders, which in relation to Statutory Instrument Consent Memorandums (SICMs) requires us to table a SICM where a statutory instrument or draft statutory instrument laid before the UK Parliament makes relevant provision.</p> <p>Standing Order 30A.10 provides that any Member may table a motion for debate, and the Welsh Government remains committed to doing so where appropriate, but we do not believe it is appropriate to make a binding commitment to do so in every case.</p>
<p>Recommendation 6.</p>	<p>AGREE.</p>

<p>The Minister should write to the Committee:</p> <ul style="list-style-type: none"> ▪ setting out its view on whether the Bill permits statutory instruments laid by the UK Government to amend regulations made by the Welsh Ministers; ▪ explaining whether it provides consent in such circumstances; ▪ committing the Welsh Government to notify the National Assembly of statutory instruments laid by the UK Government that amend regulations made by the Welsh Ministers, should the Bill permit such action. 	
<p>Recommendation 7. It would be helpful if the Minister writes to the Committee explaining what discussions he has had with the UK Government regarding the UK Government's view that clause 5 does not require the National Assembly's consent and his view of the reasons why the UK Government has arrived at that conclusion.</p>	<p>AGREE. There is no difference of opinion on whether consent is required. Clause 5 of the Bill specifies the detail of regulations that can be made under Clause 2 of the Bill. UK Government agrees that consent is required for the regulations made under Clause 2 which relate to the definitions provided in Clause 5.</p>