

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf / Our ref: MA-L/VG/0239/19

Dr Dai Lloyd AM
Chair
Health, Social Care and Sport Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

28 February 2019

Dear Dai,

Following my letter to Stephen Hammond MP of 12 February 2019, the UK Government has agreed to the additional wording I requested be included in the Memorandum of Understanding to underpin the Healthcare (International Arrangements) Bill. An amendment to the Bill to place a requirement to consult devolved administrations will be made at Lords Report Stage. On that basis, I am content to recommend that the National Assembly provides consent to the Bill.

The MoU now sets out:

- That Welsh Government will be consulted on the negotiation of agreements, with a role from the initial scoping through to the conclusion of a draft agreement;
- That Welsh Government will be consulted on the initial development and subsequent drafting of regulations under the Bill which implement these agreements, with the UK Government making every effort to proceed by consensus with the devolved administrations;
- That Welsh Government will be consulted where an agreement applies to or has implications for Wales, and on regulations giving effect to that agreement;
- That the UK Government will not normally make regulations without securing agreement from Devolved Administration Ministers beforehand;
- A process for exchanging Ministerial letters in the event of Devolved Administration agreement not being reached where regulations under Clause 2 intersect with devolved competence; and
- That these letters be made available to both Houses of Parliament in the event that the regulations proceed to be made by the Secretary of State for Health and Social Care.

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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.

These assurances give Welsh Government a meaningful role in the development of future reciprocal healthcare policy. I am attaching a copy of the agreed Memorandum of Understanding.

I would like to restate my thanks for the work the Committee has done on this issue, and hope you agree with me that this represents a positive development in this policy area.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style with a large initial 'V' and a long, sweeping tail on the 'g'.

Vaughan Gething AC/AM

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

Healthcare (International Arrangements) Bill

AMENDMENTS
TO BE MOVED
AT REPORT

After Clause 4

BARONESS BLACKWOOD

Insert the following new Clause –

“Requirement for consultation with devolved authorities

- (1) Before making regulations under section 2 that contain provision which is within the legislative competence of a devolved legislature, the Secretary of State must consult the relevant devolved authority on that provision.
- (2) In this section –
 - “devolved authority” means the Scottish Ministers, the Welsh Ministers or a Northern Ireland department;
 - “devolved legislature” means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- (3) A provision is within the legislative competence of a devolved legislature if –
 - (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament;
 - (b) it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (including any provision that could only be made with the consent of a Minister of the Crown); or
 - (c) the provision, if it were contained in an Act of the Northern Ireland Assembly –
 - (i) would be within the legislative competence of the Assembly, and
 - (ii) would not require the consent of the Secretary of State.”

ANNEX 2

MEMORANDUM OF UNDERSTANDING FOR CONSULTATION UNDER SECTION 5 OF THE HEALTHCARE (INTERNATIONAL ARRANGEMENTS) ACT

A. Introduction and overarching principles

1. This Memorandum of Understanding sets out the arrangements agreed between the Department of Health and Social Care (“DHSC”) and the devolved administrations to support meaningful consultation in line with Section 5 of the Healthcare (International Arrangements) Act (“HIA Act”). DHSC recognises that the devolved administrations have a significant role to play where arrangements to facilitate treatment outside the UK and implement healthcare agreements relate to devolved matters.
2. The UK Government and the devolved administrations are committed to delivering a reciprocal healthcare policy that works for all parts of the UK. DHSC will work with the devolved administrations, involving the Territorial Offices as appropriate, to achieve this objective.
3. The UK Government and devolved administrations will make every effort to proceed on the basis of consensus in order to achieve a consistent reciprocal healthcare system.
4. Section 5 of HIA Act requires the Secretary of State to consult the relevant devolved authority before making regulations under clause 2 that contain provision within the legislative competence of a devolved legislature.
5. Section B of this Memorandum of Understanding is not limited to consultation in line with Section 5 of HIA Act. Section C relates to the consultation requirement in Section 5 of HIA Act.
6. The arrangements set out in this Memorandum of Understanding will be underpinned by regular engagement between DHSC’s and the devolved administrations’ officials, which will support Ministerial engagement. It is acknowledged that these arrangements will rely for their effectiveness on mutual respect for the confidentiality of information exchanged.
7. This Memorandum of Understanding as far as it relates to reciprocal healthcare agreements, will apply where DHSC is the lead UK government department negotiating such an agreement. The principles of this Memorandum of Understanding will also apply to healthcare agreements which do not require the Secretary of State to make regulations under Section 2 of the Act. This Memorandum of Understanding is not legally binding and the arrangements it sets out do not extend the statutory consultation duty in Section 5 of HIA Act.
8. This Memorandum of Understanding does not affect any healthcare agreements or arrangements entered into and/or to be entered into by a Minister of the Northern Ireland Executive with the Republic of Ireland.¹

B. Policy Formation and Negotiations

9. DHSC will discuss with DA officials its policy proposals on the strategic direction for new reciprocal healthcare arrangements and any projected quantitative impact assessments of those proposals. Such engagement will occur as soon as possible at a formative stage of policy development. DHSC

¹ In accordance with participation in the North South Ministerial Council, the British Irish Council or in relation to the activities of North South Implementation Bodies established on the basis of Strand Two of the Belfast Agreement.

ANNEX 2

Ministers will write to DA Ministers to set out the policy proposals they endorse in order to build consensus on the direction to be taken in negotiations. Sharing this policy does not bind UK Government decisions.

10. To support policy formation, the devolved administrations will provide DHSC with timely comments on the documents shared and any relevant information or analysis to inform DHSC's evaluations of existing arrangements and its projected impact assessments.
11. DHSC will seek the devolved administrations' input on its negotiating positions for new healthcare agreements insofar as they relate to matters within devolved competence. DHSC Ministers and DA Ministers should be prepared for short notice intergovernmental engagement to meet international deadlines.
12. DHSC will discuss any model agreements or initial drafts of agreements drafted by DHSC with the devolved administrations before they are shared with third countries.
13. DHSC will provide updates to the devolved administrations on the progress of negotiations.
14. DHSC will share relevant information pertaining to an agreement, once it has been reached, with the devolved administrations, to ensure appropriate and successful implementation.
15. DHSC officials will notify the DA officials as early as possible should any of its policy proposals or any healthcare agreements require the Secretary of State to make regulations under Section 2 of the Act and set out its reasons.
16. DHSC will discuss any proposals for the review or amendment of implemented healthcare agreements with the devolved administrations in accordance with the arrangements set out above. The devolved administrations will provide DHSC with timely comments and relevant data, information and analysis to inform reviews.

C. Drafting of Regulations under Section 2 of HIA Act

17. DHSC officials will share draft versions of any regulations to which Section 5 applies with devolved administrations prior to finalisation to provide the opportunity to discuss the content and drafting of the provisions that would be within the legislative competence of a devolved legislature.
18. A final draft of the regulations to which Section 5 applies, will be shared with the relevant DA Ministers as early as possible and before they are laid.
19. UK Government will make every effort in the making of regulations to which Section 5 of HIA Act applies to proceed on the basis of consensus and will not normally make regulations that have not been agreed with Ministers from the devolved administrations.
20. In the event that agreement cannot be reached, 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 with making the regulations, and guided by the principles of the Intergovernmental Agreement, the exchange of letters should be made available to both Houses of Parliament when the regulations are laid.

ANNEX 2

D. Regulations made by the Devolved Administrations

21. The application of the principles in Section B of this Memorandum of Understanding will ensure that the devolved administrations are aware of any complementary regulations that will have to be made alongside the regulations made by the Secretary of State under Section 2 of HIA Act. Accordingly, the devolved administrations will make the required necessary legislative changes to ensure that there is a consistent reciprocal healthcare system.
22. To ensure UK-wide consistency where possible, the devolved administrations officials will discuss with DHSC officials the content and drafting of any regulations they intend to make to implement a reciprocal healthcare agreement as early as practicable before the regulations are laid.

E. Operational Implementation

23. DHSC officials will liaise with the DA officials to ensure that the operational implementation of reciprocal healthcare policy 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.

F. Review

24. This Memorandum of Understanding will be reviewed within 24 months of 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.

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA - L/VG/0239/19

Stephen Hammond MP
Minister of State for Health
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

28 February 2019

Dear Stephen,

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

Thank you for your letters of 20 and 27 February notifying me that the proposed additional wording to the Memorandum of Understanding to underpin the intended amendment to the Healthcare (International Arrangements) Bill has been agreed.

I welcome this confirmation and wish to take the opportunity to echo your recognition of the positive working relationships between your Department and the Welsh Government which has enabled us to reach this position. I very much look forward to this approach continuing in relation to the development of healthcare agreements and any regulations giving effect to these agreements.

In the light of the agreement on the proposed amendment to the Bill and the MoU, I can confirm that arrangements are in hand for a Supplementary Legislative Consent Memorandum and Motion to be laid which will recommend that the National Assembly gives consent to the Bill. The Supplementary Legislative Consent Memorandum is due to be laid on 1 March 2019 and the debate on the Motion is scheduled for 12 March 2019. My officials will notify your Department of the outcome of the debate.

I would note that any statutory instrument which amends Welsh primary legislation would of course be subject to a Statutory Instrument Consent Motion in the Assembly, and it would be for the National Assembly for Wales to decide whether to recommend that consent be given.

I am copying this letter to the First Minister, the Scottish Government Cabinet Secretary for Health and Sport, the Northern Ireland Permanent Secretary for the Department for Health, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office.

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Yours sincerely,

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Vaughan Gething AC/AM

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



Department
of Health &
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Stephen Hammond MP
Minister of State for Health

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Minister for Health and Social Services
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27 FEB 2019

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

I would like to reiterate my gratitude for your continued positive engagement with both myself and at official level in relation to the Healthcare (International Arrangements) Bill.

I am writing to assist with the Welsh Assembly's legislative consent process by confirming that the Government will be tabling an amendment to the Bill for Report Stage in the House of Lords on 12 March 2019.

As we have previously discussed, this amendment will place a statutory duty on the UK Government to consult the Devolved Administrations (DAs) where regulations under Clause 2 of the Bill would be within the DA's legislative competence. A Memorandum of Understanding (MoU) will underpin the amendment to the Bill, as agreed between the UK and Welsh Government. For ease of reference, I have attached these two documents as annexes.

The Government is committed to ensuring that arrangements will be conducive to the development of a reciprocal healthcare system that operates effectively across the whole of the UK and I look forward to continuing to work closely with you and at official level to achieve this.

I am copying this letter to the Scottish Government Cabinet Secretary for Health and Sport and the Northern Ireland Permanent Secretary for the Department of Health.

with best wishes

STEPHEN HAMMOND