



Ein cyf/Our ref: MA/VG/5824/19

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

14 January 2020

Dear Mick,

I would like to thank the Constitutional and Legislative Affairs and Committee for its scrutiny of the Health and Social Care (Quality and Engagement) (Wales) Bill during Stage 1 of the legislative process. Building upon what I said at the Stage 1 General Principles debate on 26 November, I am pleased to respond to the recommendations made in the Committee's scrutiny report, published on 15 November 2019.

With regard to the level of detail set out on the face of the Bill in respect of the duty of candour, this is something which has been carefully considered, both when the Bill was being prepared and as we have progressed through Stage 1 of the scrutiny process. Section 3 of the Bill clearly sets out the circumstances in which the duty comes into effect. Statutory guidance to be issued under section 10 will explain these circumstances, what the duty of candour means and set out when the duty will apply, including explanation and illustration of what is meant by "more than minimal" harm. Section 4 makes clear the key steps to be followed once the duty has been triggered, with the detail of the procedure itself to be set out in regulations.

I have placed on record my commitment to co-develop the statutory guidance with professional and patient representatives, so that the circumstances in which the duty applies is clearly understood and roundly described in a way that is accessible to all. I intend that the guidance will contain examples and case studies which will make it reader-friendly for clinicians, service users and the wider public.

I fully appreciate it is a delicate balancing act to decide how much detail goes on the face of the Bill and/or secondary legislation and how much is contained in statutory guidance. I understand the Committee's desire to seek an explanation for the approach we have taken. I am keen to learn from the experience of other jurisdictions, like England and Scotland, in this regard and in my view the Bill strikes an appropriate balance.

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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.

With regard to the future use of the powers in section 26 of the Bill, I have no foreseeable plans to use those powers in respect of amendments to primary legislation. All those amendments currently required have been included within Schedule 3 to the Bill. However, it is important to retain a power in order to ensure that the Bill can be implemented effectively in all circumstances. As required by Section 23(3) any changes to primary legislation would be subject to the affirmative procedure and therefore subject to the approval of the Assembly.

In terms of secondary legislation we will need to make some consequential changes to existing regulations, for example, to remove references to Community Health Councils, but this is a standard part of the implementation process for all Bills. Those regulations will be subject to the Assembly's negative resolution procedure which mirrors the choice of process taken in other Acts of the Assembly.

Finally, I have considered the Committee's comments about Section 26(1) and, in particular, the use of the word "expedient".

I will be bringing forward a Government amendment to replace the word "expedient" with the word "appropriate" so that the power in section 26(1) may be exercised where it is "necessary or appropriate" for the purposes of the Act.

It must be remembered that the scope of power in Section 26(1) is not to make regulations containing new or substantive provision but rather to make changes to ensure the Bill's other provisions work in practice – the provision made must be a supplementary, incidental, consequential, transitory, transitional or savings provision and must be for the purposes of the Act.

An appropriate power is needed so that consequential or transitory provision can be made that gives the best effect to the policy intentions of this Bill, enable it to be implemented effectively and ensure that the wider statute book is kept up to date and accessible. This is consistent with drafting practice in other Bills both in Wales and more widely in the UK.

In closing, I will also be writing to the Chairs of the Health, Social Care and Sport and the Finance Committees with regard to their Stage 1 reports and will copy all letters to all three Committee Chairs.

Yours sincerely,

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

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