

# LEGISLATIVE CONSENT MEMORANDUM

## Coronavirus Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Coronavirus Bill (the “Bill”) was introduced in the House of Commons on 19 March. The Bill can be found at:  
<https://services.parliament.uk/Bills/2019-21/coronavirus.html>

### Policy Objective(s)

3. The objective of the Coronavirus Bill is to enable the Governments of the UK to respond to an emergency situation and manage the effects of a Coronavirus pandemic. The Bill contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts.

### Summary of the Bill

4. The Bill is sponsored by the Department of Health and Social Care.
5. The purpose of the Bill is to enable the Governments of the UK to respond to an emergency situation and manage the effects of a COVID-19 pandemic. A severe pandemic could infect up to 80% of the population leading to a reduced workforce, increased pressure on health services and death management processes. The Bill contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts. The Bill aims to support the UK Government in the following:
  - Increasing the available health and social care workforce
  - Easing the burden on frontline staff
  - Containing and slowing the virus
  - Managing the deceased with respect and dignity
  - Supporting people
6. The Bill is required as part of a concerted effort across the whole of the UK to tackle the COVID-19 outbreak. The intention is that it will enable the right people from public bodies across the UK to take appropriate actions at the right times to manage the effects of the outbreak.

7. COVID-19 is a public health emergency and the Bill provides extraordinary measures that do not apply in normal circumstances. For this reason, the legislation will be time-limited for two years and it is neither necessary nor appropriate for all of these measures come into force immediately. Instead, many of the measures in the Bill can be commenced from area to area and time to time, so as to ensure that the need to protect the public's health can be aligned with the need to safeguard individuals' rights. These measures can subsequently be suspended and then later reactivated, if circumstances permit, over the lifetime of the Act.
8. The lifetime of the Act can itself be ended early, if the best available scientific evidence supports a policy decision that these powers are no longer needed. It is also possible to extend the lifetime of the Act for a further temporary period, again if it is prudent to do so.
9. The Bill includes provisions which relate to a wide spectrum of areas across the UK. However, they are all focused on responding to circumstances that may arise as a result of the COVID-19 pandemic.

### **Provisions in the Bill for which consent is required**

10. The Assembly's consent would be required for the following provisions.
11. Clause 1, although this is not a substantive provision, it nonetheless interacts with substantive provisions. Therefore, to the extent that this clause interacts with substantive provisions that are within the legislative competence of the Senedd, this clause too would be within competence to the same extent. There is no legal requirement, or bar to laying an LCM in respect of this provision but we consider there is some merit in including this definition provision in the LCM.
12. Clause 5 and paragraph 2 of Schedule 4 temporarily modify the Regulation and Inspection of Social Care (Wales) Act 2016 by inserting a new section 83A into that Act to enable the registrar<sup>1</sup> to register persons or "persons comprising a specified group" if the Welsh Ministers advise that an emergency<sup>2</sup> has occurred, is occurring or is about to occur and if the registrar considers the person is, or the group may reasonably be considered to be, fit, proper and suitably experienced to be registered as social workers. Paragraph 140 of Schedule 7A to the Government of Wales Act 2006 reserves the regulation of professions from the competence of the National Assembly for Wales, however, the regulation of social workers and the social care profession are excluded from that reservation. We take the view that these provisions are within the competence of the National Assembly for Wales so far as they apply in

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<sup>1</sup> The registrar referred to in section 83A is the registrar of Social Care Wales. See section 67 of the Regulation and Inspection of Social Care (Wales) Act 2016 which renames the Care Council for Wales as Social Care Wales and makes provision for its general functions (along with Schedule 2 of that Act).

<sup>2</sup> "emergency" means an emergency of the type described in section 19(1)(a) of the Civil Contingencies Act 2004 (meaning of "emergency"), read with subsection (2)(a) and (b) of that section.

relation to Wales and therefore consider that an LCM is required for this clause.

13. Clause 9 and Schedule 7 – the purpose of these provisions is to prevent delay in admitting people to hospital for treatment as a result of staff shortages during a pandemic. This is done by introducing temporary amendments to the Mental Health Act 1983 (“MHA”) to allow certain functions relating to the detention and treatment of patients to be satisfied by fewer doctors’ recommendations or certifications. Temporary amendments also allow for the extension or removal of certain time limits relating to the detention and transfer of patients including early release from imprisonment or detention. The provision in clause 9 does relate to the reserved matter of paragraph 175, prisons and offender management which includes the subject matter of sections 47 to 49 of the Mental Health Act 1983 (transfer to hospital of prisoners) and the provisions of that Act relating to persons who are restricted patients within the meaning given by section 79 of that Act. However, by applying section 108A(6) to the question of whether the provision ‘relates to’ a reserved matter, the provision enabling the health service in Wales to operate effectively during a Coronavirus pandemic does not on its ‘relate to’ prison and offender management. The purpose of the provision is to enable devolved mental health services in Wales to be provided without delay during a pandemic and as such there is reasonable argument that there should be a strong presumption in favour of a LCM being required.
14. Clause 10 allows the Secretary of State for Health and Social Care (in relation to the NHS for England) and the Welsh Ministers (in relation to the NHS for Wales) to provide indemnity for clinical negligence liabilities of healthcare professionals and others arising from NHS activities carried out as part of the response to a Coronavirus pandemic. This indemnity will not apply to those already covered by state-backed schemes established under section 30 of the NHS (Wales) Act 2006. It will also not cover healthcare professionals who have indemnity cover for the clinical negligence in question through a private Medical Defence Organisation, a professional body or where they have commercial insurance. The purpose of the clause is to ensure that, in the exceptional circumstances that might arise in a Coronavirus pandemic, sufficient indemnity arrangements are in place to cover all NHS activities required to respond to the pandemic. We take the view that these provisions do not breach any of the legislative competence tests. These provisions relate to Health. The objective of these provisions is to ensure the sustainability of the Healthcare work force during a pandemic. This will, in turn, assist the Welsh Ministers in delivering on their duty under section 1 of the NHS (Wales) Act 2006 to “*continue the promotion in Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of Wales and in the prevention, diagnosis and treatment of illness*”.
15. Clause 14 and schedule 11. There are duties on Local Authorities in Parts 3 and 4 of the Social Services and Well-being (Wales) Act 2014 (SSWWA) to assess needs for care and support, and to meet those needs. In the

event of an emergency it is expected that there would be a surge in demand for social care services at a time when there would be fewer social care workers available to provide them. The Bill will replace these duties with a duty on Local Authorities to meet needs for care and support with a test which is aligned with existing SSWWA provision so that a Local Authority is required to meet the needs in order to protect an adult or adult carer from abuse or neglect or the risk of abuse or neglect. These provisions will involve the ceasing of current practices and are intended to reduce operational burden. Local Authorities in Wales will need to develop and undertake some new processes, including the organisation of urgent evaluations of basic care needs and the ethical and consistent prioritisation of care down to the level of the basic requirements as provided for in the Bill. The Bill therefore includes provision for the Welsh Ministers issue guidance to local authorities as a consequence of these provisions and, where necessary, to issue directions to ensure compliance with that guidance.

16. Clauses 23 to 27 provide powers to ensure that Ministers are able to obtain information on potential disruption or risk of disruption of food chains in the unlikely event that the food industry, who are currently providing this information voluntarily, cease to do so for any reason. This continuity of food supply chain information is necessary to enable government to plan for, and respond to, any disruption or risk of disruption to food supply. Ensuring the continuity of food supply chain information is necessary to enable a government to plan for, and respond to, any disruption or risk of disruption to food supply. These provisions relate to food, and food supply. The purpose of the provision closely concerns the health and well-being of persons in Wales – to ensure people of Wales have access to food. It also closely concerns agriculture and aquaculture and the continuity of the agri-food industry in relation to Wales. The functions conferred on the Welsh Ministers are expressed by reference to the extent that an Act of the Senedd could confer those functions on the Welsh Ministers. On this basis, the purpose of those functions necessarily cannot relate to any reserved matters. For these reasons, we consider that these provisions, to the extent they confer functions on the Welsh Ministers, are within the legislative competence of the Senedd. We consider that an LCM is required for this clause.
17. Clause 31 is within the competence of the Welsh Ministers. It relates to the regulation of social care services and independent health care services. Social care services are regulated under provision in the Regulation and Inspection of Social Care (Wales) Act 2016. Independent health care services are regulated under part 2 of the Care Standards Act 2000. The executive functions under the 2000 Act are all conferred on Welsh Ministers. Although disclosure and barring is referred to in paragraph 50 of Schedule 7A of the Government of Wales Act 2006 as a reserved matter, the provision is not about the existence or operation of the disclosure and barring service. Its purpose is to confer discretion on Welsh Ministers, in the current health emergency, to modify or disapply

requirements which are incorporated within the regulatory requirements to which the relevant regulated services in Wales are subject.

18. Clause 35 and Part 1 of Schedule 15 provides a power for the Secretary of State and the Welsh Ministers to direct the temporary closure of an educational institution or registered childcare provider, or restrict access to them, during the pandemic. The Secretary of State and the Welsh Ministers can authorise a local authority to exercise this function in respect of schools and childcare providers; or the Higher Education Funding Council for Wales (HEFCW) in respect of regulated providers in Wales. A direction can be enforced by the Secretary of State and Welsh Ministers (or local authorities or HEFCW) by making an application for an injunction in the civil courts. Education is a devolved matter and most of the powers and duties of the Secretary of State concerning schools under the Education Act 1996 are exercised in relation to Wales by the Welsh Ministers (pursuant to article 1 and schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999). The same is true of the Secretary of State's functions in respect of further and higher education under several Acts of Parliament pre-dating devolution. Under section 16 of the School Standards and Organisation (Wales) Act 2013, the Welsh Ministers have powers to direct the closure of maintained schools. However, these powers only apply where the school is failing in some respect. Although these powers are not as wide as the powers in the Bill in relation to closing a school, they provide a strong argument that the Welsh Ministers have the power to make such provisions. The Welsh Ministers have no powers to close further or higher education providers in a context such as, for reasons relating to, the Covid-19 pandemic. Childcare is a devolved matter, and means anything which amounts to childminding or the provision of daycare for children for the purpose of Part 2 of the Children and Families (Wales) Measure 2010. The powers and duties of the Welsh Ministers relating to childminding and daycare are set out within the Measure. Under section 31 of the Measure there is a power to cancel the registration of a childcare provider, however these powers only apply where a person becomes disqualified from registration. Although these powers are not as wide as the powers in the Bill in relation to closing childcare providers, they provide a strong argument that the Welsh Ministers have the power to make such provisions.
19. Clause 36 and Schedule 16 provide the Secretary of State and the Welsh Ministers with powers to make directions in connection with the continued running of the education, training and registered childcare systems. The Secretary of State and the Welsh Ministers can authorise a local authority to exercise this function in respect of schools or childcare providers; or the Higher Education Funding Council for Wales (HEFCW) in respect of regulated providers in Wales. It should be noted that childminders are excluded from this power. This clause also provides a power for the Secretary of State and the Welsh Ministers to disapply or modify by notice existing requirements or restrictions contained in relevant legislation and funding agreements during the pandemic. A notice can disapply or modify a provision for a specified period, which must not exceed one month. The

list of legislation that can be disapplied or modified is set out in Schedule 16 but may be added to by regulations subject to the made affirmative procedure. Education is a devolved matter and most of the powers and duties of the Secretary of State concerning schools under the Education Act 1996 are exercised in relation to Wales by the Welsh Ministers (pursuant to article 1 and schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999). The same is true of the Secretary of State's functions in respect of further and higher education under several Acts of Parliament pre-dating devolution. Childcare is a devolved matter, and means anything which amounts to childminding or the provision of daycare for children for the purpose of Part 2 of the Children and Families (Wales) Measure 2010. The powers and duties of the Welsh Ministers relating to childminding and daycare are set out within the Measure. Given the Senedd's competence in respect of education and childcare, there is a strong presumption that a LCM would be required in respect of this element of the Bill. We do not consider that there are any relevant reserved matters which would result in this provision being outside the legislative competence of the Senedd.

20. The purpose of these provisions is to ensure adequate border security in the event that, as a result of Coronavirus, there are insufficient numbers of Border Force staff available to secure every port. We consider the provisions fail one or more of the legislative competence tests. In particular, the clause and Schedule relate to 'national security', 'transport security' and / or 'immigration' reservations set out in Schedule 7A GOWA 2006. For that reason, the subject matter is not a matter within the Senedd's legislative competence, and an LCM is not required in accordance with Standing Order ('SO') 29. However, the provisions are made in connection with devolved matters, insofar as legislative competence exists in relation to ports and harbours (only reserved trusts ports and harbours not wholly in Wales are reserved under paragraph 121, Part 2, Schedule 7A GOWA 2006). Further, there appear to be potential impacts on executive competence. Part 2 of the Wales Act 2017, and sections 29 to 38 in particular, transferred various executive functions relating to harbours to the Welsh Ministers (insofar as they had not already been transferred by previous Transfer of Functions Orders). In particular, section 29 WA 2017 transferred various functions relating to harbours wholly in Wales (other than reserved trust ports as defined by s32 of that Act) from a Minister of the Crown to the Welsh Ministers. Officials do not anticipate a primary direction being issued directly to Welsh Ministers pursuant to this clause and Schedule. The power given to the Secretary of State is to direct port operators to suspend relevant port functions ('a primary direction'). It is unlikely that the Welsh Ministers could be caught by the basic definition of 'port operators', which is 'a person concerned in the management of a port', as Welsh Ministers are not involved in the

direct practical management of any ports, be they airports, seaports or hoverports. However, the provisions allow the Secretary of State, when making or having made a primary direction to the operator of a port, to give a consequential written direction to other parties, if the Secretary of State considers it appropriate in consequence of that primary direction. It is possible that such a consequential / secondary direction could be issued to Welsh Ministers and impinge upon the free exercise of their executive functions (albeit for an extremely limited time – initial directions may only last for 6 hours, and may only be extended for 6 or 12 hour periods after that). There are grounds on which to lay a LCM for this provision, as it also relate to devolved matters (even though the purpose is related to reserved matters). It appears from paras 34 and 105(d) of the DGN that the UK Government would normally expect to have to seek consent for a provision which altered the Welsh Ministers' functions.

21. Clause 49 and Schedule 20 relate to the detention, screening and isolation of potentially infectious persons, when there is a risk that they may infect or contaminate others. The provision allows restrictions and requirements to be imposed on a person who is, or may be, infected with Coronavirus and there is a risk they may infect others, or if a person has been in an "infected area" within 14 days of arriving in the UK. The powers under the Bill (to assess, isolate etc.) are exercisable by officers or public health consultants designated by the Welsh Ministers. The provision will revoke the Health Protection (Coronavirus) (Wales) Regulations 2020, which set out broadly similar public health protection powers for Wales. These were made under powers set out in Part 2A of the Public Health (Control of Disease) Act 1984 ("the 1984 Act") which sets out a regime for the protection of public health from infection or contamination. These provisions relate to public health protection. The purpose of the provision closely concerns the health and well-being of persons in Wales – to delay or prevent the significant further transmission of coronavirus in Wales. On this basis, the purpose of this provision does not relate to any reserved matters. For these reasons, we consider that these provisions, to the extent they confer functions on the Welsh Ministers, are within the legislative competence of the Senedd. We consider that an LCM is required for this clause.

22. Clause 50 and Schedule 21 gives the Welsh Ministers in relation to Wales the power to make a direction to restrict or prohibit an event or gathering, and to order the closure of premises. The exercise of this power will be conditional on the Welsh Ministers having declared that the incidence or transmission of Coronavirus constitutes a serious and imminent threat to public health in Wales and that the incidence or transmission of Coronavirus is at such a point that these measures may reasonably be considered as an effective means of preventing the further, significant transmission of Coronavirus. Before issuing a direction, the Welsh Ministers are required to have regard to the advice of the Chief Medical Officer, or one of the Deputy Chief Medical Officers for Wales. The

purpose of the provision closely concerns the health and well-being of persons in Wales – to prevent, protect against, delay or otherwise control the incidence or transmission of coronavirus in Wales. An Act of the Senedd could confer functions of the same nature, extent and application on the Welsh Ministers. We consider that these clauses to make provision that is within the legislative competence of the Senedd and therefore an LCM is required.

23. Clause 56 and Schedule 27 - the purpose of Part 1 of Schedule 27 is to ensure that local authorities and national authorities have powers to require persons to provide information to them to enable them to ascertain capacity to effectively manage the transportation, storage and disposal of dead bodies and human remains. For example, information from private companies such as private funeral homes or crematoria. The aim is to inform decisions to designate a local authority so that directions can be made to enable changes in the death management system where there is or is likely to be insufficient capacity in that area as a result of excess deaths from the Coronavirus. Part 2 of the Schedule then allows national authorities to designate a local authority, where, as a result of Coronavirus, there is likely to be insufficient capacity within that area to transport, store or dispose of dead bodies or human remains. Once an area is designated a local authority can give directions to companies or corporations. Part 3 allows for national authorities to intervene if a local authority is not effectively managing the excess deaths in their area. Schedule 27 confers direction making powers in conjunction with all of these matters on both the Welsh Ministers (as the relevant national authority in relation to Wales) and local authorities in Wales. The only reservation that we consider may be engaged is at paragraph 47 of Schedule 7A of “emergency powers”. This is clearly relevant here as the powers are aimed at managing the repercussions of an emergency which could suggest that it would be outside the legislative competence of the Senedd to legislate in this way. Having said that, the provisions could also be interpreted as all about devolved matters – given that they are based on the powers and duties of local authorities in Wales and the Welsh Ministers to manage that response. This accords with the overarching view we have taken in relation to the way in which the whole Bill has the potential to engage this reservation. In conclusion therefore, whilst it is possible that this clause is not within the legislative competence of the Senedd, it nonetheless impacts on a variety devolved areas.

24. Clause 62 provides that where, before 6 May 2021 an election under section 10 of GoWA 2006 to fill a vacant constituency seat would otherwise be required to be held, the Presiding Officer of the Senedd may fix a later date for a poll at that election. This is provision for a purpose within the legislative competence of the Senedd.

25. Clause 63 will enable any casual vacancies (also known as by-elections) which may arise in local authorities in Wales where the date of the poll would otherwise fall between the period beginning with the day on which



this Act is passed and ending with 5 May 2021, to be postponed by regulations made by the Welsh Ministers. This is provision for a purpose within the legislative competence of the Senedd.

26. Clause 64 provides that regulations under this clause will enable the Welsh Ministers to make supplementary provision in connection with clauses 62 and 64. These clauses allow the postponement of polls at devolved elections and therefore are for a purpose within the legislative competence of the Senedd.

27. It is considered that the Senedd's consent is required for all of the above provisions.

### **Final Provisions**

28. Clauses 71, 73 – 78, 80, 85 and 87 are end of Bill clauses that include commencement, extent and short title. There are also provisions that permit about whether regulations can be made to suspend or revive provisions of the Bill as well as provisions about the automatic expiry of certain provisions in the Bill and the power to alter the date of expiry.

29. Although these are not substantive provisions, they nonetheless interact with substantive provisions. Therefore, to the extent that these clauses interact with substantive provisions that are within the legislative competence of the Senedd, these clause too would be within competence to the same extent.

30. There is no legal requirement, or bar to laying an LCM in respect of these provisions but we consider there is some merit in including end of Bill provisions in the LCM

### **Amendments**

31. The following amendments, if passed by Parliament would also require the consent of the Senedd.

32. Provision to extend protection from eviction for tenants - the provisions' purpose is to give further time to tenants facing eviction from rented properties by extending the notice period that a landlord is required to serve on a tenant before they can issue proceedings for possession to at least three months. The overall policy intent is to reduce unnecessary pressures on the healthcare, social care and local authority systems that would be caused by homelessness. Tenants are to be protected, particularly at times when their income streams may be vulnerable, and they will be worried about their health and well-being. The clauses temporarily extend the period in which possession proceedings cannot be brought set out in the Housing Acts 1985, 1988 and 1996 and create an equivalent notice period for statutory regulated tenancies under the Rent Act 1977. The policy is across all tenures and in relation to all types of tenancy; it is not limited to tenants who have or may have contracted

Coronavirus. Although the policy does not require a direct relation to Covid-19 in terms of the reason for seeking possession, the policy goes beyond simply trying to assist people directly in difficulties to pay their rent as a result of Covid-19 but is aimed at preventing significant numbers of households becoming or being under threat of being homeless at a time of national crisis when housing, health and other public services are under extreme pressure and individuals are at significant risk to health and wellbeing as a result. The protection period recognises that landlords may in cases of rental arrears be deprived of an income stream for the period, and will be delayed in gaining possession of the property to sell or put to alternative use, and is aimed at being a proportionate response to both parties. It is arguable that the provisions engage the reservation in respect of consumer protection and it would be possible to argue that they could touch upon the law of reserved matters in that they relate to an interest in land. However, we consider that the better argument is that they relate to the devolved subject matter of housing. It is relevant in that regard that the Assembly has previously legislated in that area to enact the Renting Homes (Wales) Act 2016 which, when commenced, will replace the underlying provisions to be amended by the proposed clauses in the Parliamentary Bill.

33. Provisions to include paragraph 10A and 10B (Schedule 7 – Amendments to the Mental Health Act 1983) - A government amendment will insert paragraph 10A in Schedule 7 to the Bill. The purpose of the provision is to remove the requirement in section 65(3) that there must be at least three members constituting the Mental Health Review Tribunal for Wales (MHRTW). The President of the MHRTW or person appointed by her may instead appoint one or two members. Paragraph 10B provides that the MHRTW may determine and application or reference without a hearing if it considers that it would be impractical to hold a hearing, sufficient evidence is available and it would not be contrary to the interests of the patient. We have considered whether the provisions relate to the reserved matter in paragraph 9 Schedule 7A (Tribunals). The functions of the MHRTW are exercisable in relation to Wales only and do not relate to reserved matters and therefore the exception in paragraph 9(2) applies. The MHRTW makes determinations in relation to mental health patients who are detained under the Mental Health Act 1983 which is not a reserved matter. We have considered whether the provision relates to the reserved matter in paragraph 175 (Prisons and other institutions for the detention of persons charged with or convicted of offences) in so far as the MHRTW makes determinations in relation to restricted patients within the meaning of section 79 of the Mental Health Act 1983. However as the determination relates to mental health which is not reserved we consider that paragraph 175 is not engaged. We have also considered whether the restriction in paragraph 4 Schedule 7B is engaged but in our view the functions of the MHRTW do not make modifications to the criminal law. For these reasons, we consider that these provisions are within the legislative competence of the Senedd and therefore an LCM is required.

34. Local authority meetings - the purpose of the power conferred by clause 85 is to enable the Welsh Ministers to make regulations relating to local authority meetings. Clause 85 also confers the same power on the Secretary of State in relation to England and the Department for Communities in Northern Ireland. We take the view that these provisions would be within the legislative competence of the Senedd. The law in relation to the structures and functioning of local government in Wales is devolved. The provisions relate to the conduct of local authority meetings (for example, their frequency and their location), public access to these meetings, and will enable members of authorities to attend meetings remotely. The provisions will enable the Welsh Ministers to make regulations in relation to meetings of various local authority bodies, for example county and county borough councils, community councils, fire and rescue authorities and national park authorities in Wales. These are all devolved bodies. For these reasons, we consider that these provisions are within the legislative competence of the Senedd and consider that an LCM is required for this clause.
35. Elections to be held in the period after 15 March - amendments have been prepared which supplement those provisions already within the Bill at introduction which would allow the postponement of certain polls where no such equivalent powers would otherwise exist. These amendments are a temporary measure specifically aimed at polls which would normally be required to be held within the period beginning with 16 March 2020 and ending with the day 30 days after that on which this Act is passed. The purpose of these provisions is to provide statutory protection to returning officers (and others) who do not comply with their legal duties in respect of continuing to hold those polls in light of the current public health situation. They do so by disappling provisions within the Representation of the People Act 1983 which could otherwise result in criminal liability for the relevant office-holder. It is considered that these amendments relate to the devolved matter of the conduct of Welsh local authority elections.
36. Emergency arrangements concerning medical practitioners: Wales - the General Medical Council (GMC) may under section 18A (Temporary registration with regard to emergencies involving loss of human life or human illnesses etc) of the Medical Act 1983, temporarily register a person as a fully qualified medical practitioner if the Secretary of State advises that an emergency has occurred, is occurring or is about to occur. Medical practitioners may not perform any primary care services, unless they are general medical practitioners and they are included in a medical performers list for a Local Health Board in Wales. This clause contains temporary modifications of (a) the National Health Service (Performers Lists) (Wales) Regulations 2004 (S.I. 2004/1020 (W. 117)), and (b) the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (S.I. 2004/478 (W. 48)). The purpose of this clause is to enable temporarily registered GPs to perform primary medical services in Wales in certain circumstances despite not being on the performers list of a Local Health Board. It makes similar provision for Wales to that made by Schedule 2 to the Bill for Scotland. An Act of the Senedd could confer

functions of the same nature, extent and application on Local Health Boards in Wales. We consider that these clauses to make provision that is within the legislative competence of the Senedd and therefore an LCM is required.

37. Commercial leases - insofar as they relate to Wales the provision provides that until 30 June 2020 or such later date as may be specified in regulations by the Welsh Ministers or the Secretary of State (with the Welsh Ministers' consent): There shall be a moratorium on landlords obtaining possession of business premises due to forfeiture on the grounds of non-payment of rent, thereby amending s138 County Courts Act 1984 and s38 Senior Courts Act 1981; and Landlords will be prevented from opposing the renewal of business tenancies on the ground specified in s30(1)(b) Landlord and Tenant Act 1954 that tenants have persistently delayed in paying rent. These provisions will apply to existing forfeiture proceedings as well as future proceedings during this period and will therefore have retrospective effect. Paragraph 3(1) of Schedule 7B to the Government of Wales Act 2006 provides that "*A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the private law*". Subsection (2) of the same paragraph defines "The private law" as meaning "*the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession*". On this basis there is an argument that this amendment which seeks to amend the law of property (namely by amending the Landlord and Tenant Act 1954, the County Courts Act 1984 and the Senior Courts Act 1981) engages the restriction in paragraph 3(1) of Schedule 7B, and would not be within the legislative competence of the Assembly. However, subsection (4) provides that "*Sub-paragraph (1) does not apply to a modification that has a purpose (other than modification of the private law) which does not relate to a reserved matter.*" Where the purpose of the provision is not to modify the private law for its own sake, but for another non-reserved the purpose, then subsection (4) would permit that modification. The purpose of the Bill as a whole is to put in place emergency measures to deal with the Covid-19 pandemic. The purpose of the particular provision under consideration is multi-faceted. Firstly, it addresses the imminent threat to health, by facilitating business and the general public to adhere to Government advice with regards social distancing, by easing the pressure on businesses to stay open. Secondly, its purpose is to provide support to, and protect the financial viability of businesses, and consequently protect the economy. Neither Health nor Economic Development are listed as reserved matters in the Government of Wales Act 2006, and were in fact listed as devolved matters in the Government of Wales Act 2006, prior to its amendment by the Wales Act 2017. We have also considered whether the amendment engages the restriction on the law on reserved matters contained in paragraph 1 of Schedule 7B, on the basis that the amendment makes amendment to the County Courts Act 1984 and the Senior Courts Act 1981. Paragraph 1 of Schedule 7B provides that "*a provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the law on reserved matters*". Subsection 2 provides that

the law on reserved matters means “(a) any enactment the subject-matter of which is a reserved matter and which is comprised in an Act of Parliament or subordinate legislation under an Act of Parliament, and (b) any rule of law which is not contained in an enactment and the subject-matter of which is a reserved matter”. It is our opinion that the purpose of the provisions being amended, and the amendments themselves, relate to the law of property/landlord and tenant rather than the single jurisdiction of England and Wales. In any event, we consider that the amendment to the County Courts Act 1984 and the Senior Courts Act 1981 are ancillary to the purpose of the amendment (which does not relate to reserved matters) and has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision, and as such, the restriction in paragraph 1(1) would not apply in any event (paragraph 2(1)). On the basis outlined above, we consider that the proposed amendment is within the legislative competence of the Assembly, and as such should be included in the LCM.

38. Amendment to clause 31 (power for Welsh Ministers to disapply certain DBS provisions). The purpose of this amendment is to provide protection for persons specified in a notice made by the Welsh Ministers in accordance with clause 31(4)(a). This amendment is necessary for the effective operation of the existing clause. For the reasons set out above in relation to clause 31, it is considered that this amendment is also within the legislative competence of the Senedd so it is appropriate, if this amendment is passed, for the Senedd to provide their consent to it in accordance with the LCM process.
39. Clause 50 and Schedule 21 give the Welsh Ministers in relation to Wales the power to make a direction to restrict or prohibit an event or gathering, and to order the closure of premises. This amendment will insert into Part 4 of Schedule 21 a power for the Welsh Ministers to designate a person to enforce compliance with directions issued by the Welsh Ministers using the powers in Schedule 21. It will mirror an amendment being inserted into Part 2 of Schedule 20 in relation to England. Welsh Government were given very little notice or time on which to comment on this proposed amendment but officials sought explicit provision empowering Welsh Ministers to designate reserved authorities, such as the police, as well as reserved authorities. However, UKG were not able to provide any specific drafting to meet this request due to the urgency of the amendment but the Office of Parliamentary Counsel has confirmed that "person" means any person. It therefore seems, and Welsh Ministers may wish to argue that the provision potentially could relate to reserved authorities. The police have sufficient powers under PACE 1984 and other legislation to enforce the criminal law, and therefore are able to enforce any directions issued by the Welsh Ministers. The purpose of this amendment is to ensure the Welsh Ministers directions are capable of being enforced by other designated persons in the event that the police, who will also be affected by decreased staff numbers due to illness during a pandemic, need to be deployed on other more urgent matters and therefore may not have capacity to enforce prohibitions under Schedule 21. Paragraph 8 of

Schedule 7B provides that an act of the Senedd cannot confer a function on a reserved authority (or give power to do so in subordinate legislation) without consent of the Minister of the Crown. As the amendment refers to “a person” this may include potentially include reserved authorities (and Welsh Ministers may wish to deploy this argument so as to use reserved authorities for enforcement purposes) and therefore would breach the restriction in Schedule 7B. While an Act of the Senedd could confer functions of the same nature, extent and application on the Welsh Ministers in relation to devolved Welsh authorities, consent would be required for it to apply to reserved authorities. Although this would usually mean it was not within the legislative competence of the Senedd, the UKG position in the Devolution Guidance Note is that, for the purpose of LCMs, the need for consent can be ignored.

40. Amendment to Schedule 27 - the treatment and method of committal of the deceased is a highly sensitive and significant issue, and there are many variations in people’s preferences. There had been concern about whether or not wishes would be taken into account. To meet this concern, these amendments seek to reassure the public that their wishes, where known, will be taken into account by local and national authorities (being local authorities and the Welsh Ministers in relation to Wales) when exercising the powers under Schedule 27 to the Bill as introduced in relation to dead bodies as a result of the coronavirus outbreak. These amendments relate to clause 56 and schedule 27 as they appeared in the Bill as introduced. As per the advice above, it is our view that there are reasons to justify laying a LCM for these provisions as whilst there are some arguments that they are not with the legislative competence of the Senedd, they nonetheless impact on devolved areas.

41. It is considered that the Senedd’s consent will be required to the extent that any of these amendments are passed by parliament and therefore form part of the Bill.

### **Reasons for making these provisions for Wales in the Coronavirus Bill**

42. The Bill supports a cohesive UK approach in responding to the COVID-19 public health threat, providing coherent powers to respond to the outbreak in Wales, in both reserved and devolved areas, and respecting the devolution settlement. The intention is to get to a position whereby the right people (public agencies in all four nations of the UK) can take the right action (as set out in the UK COVID-19 Action Plan: <https://www.gov.uk/government/publications/coronavirus-action-plan/coronavirus-action-plan-a-guide-to-what-you-can-expect-across-the-uk>) at the right time (as a result of decisions taken by the four UK governments, usually under the auspices of COBR) - using the same powers, at the same time, in the same way.

43. The action plan sets out options that can be taken as part of the response. This Bill ensures that the agencies and services involved – schools, hospitals, the police and others – have the tools and powers they need. Each of the four nations of the UK has its own set of laws, and thus these tools and powers differ (to varying degrees) in each area. Consistency of outcome will be achieved by making the range of tools and powers consistent across the UK.

### **Financial implications**

44. There are currently no additional financial implications for the Welsh Government or the Assembly as a result of taking these powers in this Bill. Whilst the Bill attempts to reduce potential costs through the streamlining of services and processes, there is an expectation that the financial impact of the pandemic will be extensive.

### **Conclusion**

45. This Bill supports a cohesive UK approach to dealing the Coronavirus pandemic. It is therefore the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill.

**Vaughan Gething AM**  
**Minister for Health and Social Services**  
**24 March 2020**