

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Health and Care Bill

April 2022



1. Background

The UK Government's Health and Care Bill

1. The UK Government's Health and Care Bill¹ (the Bill) was introduced into the House of Commons on 6 July 2021. It is sponsored by the Department of Health and Social Care.
2. The Bill completed its passage through the House of Commons on 22 November 2021 and first reading in the House of Lords took place on 24 November. Lords consideration of Commons amendments took place on 5 April 2022. The House of Commons will consider the Lords Amendments on 25 April 2022.

The Welsh Government's Legislative Consent Memorandum, Memorandum No. 2 and Memorandum No. 3

3. Standing Orders 29.1 and 29.2 provide that a Legislative Consent Memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.
4. On 1 September 2021 Eluned Morgan MS, the Minister for Health and Social Services (the Minister), laid before the Senedd a Legislative Consent Memorandum² (the Memorandum) in respect of the Bill.
5. On 17 December 2021 the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum³ (Memorandum No. 2) in respect of amendments made to the Bill on 23 November 2021 during Report Stage in the House of Commons. Clause (and Schedule) numbering referred to in Memorandum No. 2 relates to the version of the Bill as introduced into the House of Lords.⁴
6. On 28 January 2022 the Minister laid before the Senedd a further Supplementary Legislative Consent Memorandum⁵ (Memorandum No. 3) in respect of amendments tabled to

¹ [Health and Care Bill, as introduced](#) (HC Bill 140 2021-22)

² Welsh Government, [Legislative Consent Memorandum, Health and Care Bill](#), September 2021

³ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Health and Care Bill](#), December 2021

⁴ [Health and Care Bill, as introduced](#) (HL Bill 71)

⁵ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\), Health and Care Bill](#), January 2022

the Bill on 24 January 2022 during Committee Stage in the House of Commons. Clause (and Schedule) numbering referred to in Memorandum No. 3 also relates to the version of the Bill as introduced into the House of Lords.

Summary of our first and second reports

- 7.** We reported on the Memorandum (first report) on 3 December 2021.⁶ Paragraphs 15 to 94 of our first report set out in detail our consideration of the Memorandum.
- 8.** Our first report included four formal conclusions and eight recommendations. The Minister responded to our first report on 2 February 2022.⁷
- 9.** We reported on Memorandum No. 2 and Memorandum No. 3 (second report) on 14 February.⁸ Paragraphs 70 to 129 of our second report set out in detail our consideration of these Memoranda.
- 10.** Our second report included 7 formal conclusions and 8 recommendations. The Minister responded to our second report on 15 February 2022.⁹

The Senedd's consideration of the Memorandum, Memorandum No. 2 and Memorandum No. 3

- 11.** A legislative consent motion for the Bill (based on the Memorandum, Memorandum No. 2 and Memorandum No. 3) was considered and agreed in Plenary on 15 February 2022.¹⁰

The Welsh Government's Legislative Consent Memorandum No. 4

- 12.** On 5 April 2022 the Minister laid before the Senedd a further Supplementary Legislative Consent Memorandum¹¹ (Memorandum No. 4) in respect of amendments made to the Bill on 30 March 2022 in the House of Commons during consideration of Lords' amendments to the

⁶ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memorandum on the Health and Care Bill](#), December 2021

⁷ [Letter from the Minister for Health and Social Services](#), 2 February 2022

⁸ Legislation, Justice and Constitution Committee, [The Welsh Government's Supplementary Legislative Consent Memoranda \(Memorandum No. 2 and Memorandum No. 3\) on the Health and Care Bill](#), February 2022

⁹ [Letter from the Minister for Health and Social Services](#), 15 February 2022

¹⁰ [Plenary, 15 February 2022](#)

¹¹ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 4\), Health and Care Bill](#), April 2022

Bill. Clause (and Schedule) numbering referred to in Memorandum No. 4 relates to the version of the Bill as amended on Report by the House of Lords.¹²

Changes to the Bill for which consent is sought since the publication of the Memorandum No. 3

13. Paragraphs 10 to 21 in Memorandum No. 4 set out changes made to the Bill since the publication of Memorandum No. 3, and the Welsh Government's view on these changes.

14. On 28 March 2022, an amendment regarding 'organ tourism' was tabled by the UK Government in the House of Commons.

15. At paragraph 12 of Memorandum No. 4 the Minister states:

"The amendment is a UK Government amendment tabled in lieu of a new clause, clause 181, to the Bill. This clause was added by non-Government amendment, Lords amendment number 89, tabled at Lords Report stage by Lord Hunt of King's Heath and passed by the Lords on 16 March. The clause was regarded by the UK Government as unworkable and potentially having unintended consequences. The UK Government therefore proposed an amendment in lieu of Lord Hunt's amendment, which would have the same effect as Lord Hunt's amendment in terms of deterring people from seeking to obtain organs abroad unethically but would improve the areas of concern to the UK Government now in the Bill."

16. At paragraphs 14 to 16 of Memorandum No. 4 the Minister sets out the detail of the UK Government amendment tabled in lieu of Lord Hunt's amendment. The Minister states that the new amendment inserts a new section 32A into the *Human Tissue Act 2004* (the 2004 Act) and a new section 20A into the *Human Tissue (Scotland) Act 2006*. The amendment extends what is already a criminal offence in the UK to pay, offer to pay or make arrangements to pay for organs, to acts of this nature carried on outside the UK.

17. At paragraph 17 of Memorandum No. 4 the Minister states:

"Lord Hunt's amendment sought to criminalise UK citizens who arrange transplants abroad without consent. However that would be much more complicated to achieve because existing offences in relation to consent apply to those carrying out the transplant, and not those who arrange or receive

¹² [Health and Care Bill, as amended on Report](#) (HL Bill 132)

them. There will be very few, if any, situations where there is no financial gain involved and so the UK Government amendment has the effect desired by Lord Hunt, i.e. to deter people from travelling abroad to pay for an organ transplant, but without the complexities of having to prove consent. It also ensures that certain burdensome aspects of Lord Hunt's amendment affecting healthcare professionals, administrators, and those who legitimately receive an organ overseas, are removed."

18. At paragraph 18 of Memorandum No. 4 the Minister states:

"We support this provision to extend to and apply in Wales. Whilst the number of cases of people seeking to pay for an organ overseas is low, this amendment sends an important message that this is unacceptable. Not to support the amendment extending to Wales would mean that this measure will not apply to Welsh residents seeking to pay for organs for transplant abroad and we would be left in the position of seeking another legislative opportunity to achieve the same measure. On this occasion therefore, I believe it is right to agree to the UK Government legislating on behalf of Wales."

19. The Minister concludes:

"I welcome the amendment the UK Government has made to the Bill regarding organ 'tourism' and the provision extending to Wales.

I am therefore able to recommend consent to this clause."¹³

¹³ Memorandum No. 4, paragraphs 23 and 24. See also paragraphs 20 and 21.

2. Committee consideration

20. We considered Memorandum No. 4 at our meeting on 25 April 2022. We also agreed our report on 25 April.¹⁴

21. This report should be read along with our first and second reports.

Our view

General comments

22. In our first report, we highlighted concerns with the timeliness of Welsh Government legislative consent memoranda being laid before the Senedd and how delays to laying such memoranda place Senedd committees at a disadvantage as they attempt to scrutinise what are, ever increasingly, complicated matters.

Conclusion 1. The Minister's action to lay Memorandum No. 4 before the Senedd within 10 days of relevant amendments being tabled in the House of Commons is to be welcomed.

23. We note the position of the Minister as set out in Memorandum No. 4 with regards to the amendment made to the Bill which is relevant to a devolved purpose.

Conclusion 2. We agree with the Minister's assessment and that the new clause relating to commercial dealings in organs for transplantation which is detailed in Memorandum No. 4 relates to a devolved purpose.

24. We note the position of the Minister as set out in Memorandum No. 4 with regards to her reasons for making further provision for Wales in the Bill.

¹⁴ Legislation, Justice and Constitution Committee, 25 April 2022