

Report on the Legislative Consent Memorandum for the Health and Care Bill

December 2021

1. Introduction

- 1.** On 1 September 2021, the Minister for Health and Social Services (“the Minister for HSS”) laid before the Senedd a legislative consent memorandum (“the LCM”) for the UK Government’s Health and Care Bill (“the Bill”).
- 2.** We considered the LCM at our meeting on 23 September 2021. Following the extension of the reporting deadline to 11 November 2021, we subsequently wrote to the Minister for HSS, the UK Government’s Minister for Health (“the UK Minister”), and to stakeholders with an interest in the matters raised in the LCM, including: the General Dental Council; the General Medical Council; the General Optical Council; the General Pharmaceutical Council; the Health and Care Professions Council; the Nursing and Midwifery Council; and the Welsh NHS Confederation.
- 3.** We considered the responses received at our meeting on 4 November 2021, and, following the extension of the reporting deadline from 11 November 2021 to 16 December 2021, we wrote again to the Minister for HSS to seek further information.
- 4.** Our letters, and the responses we received, are available on the Senedd’s website.
- 5.** Throughout this report, references to clause numbers should be read as relating to the numbering in the Bill as introduced to the House of Commons in July 2021, unless otherwise stated.



2. Background

Overview of the Health and Care Bill

6. The Bill was introduced to the UK Parliament on 6 July 2021. The [Explanatory Notes to the Bill](#) state that its aims are to:

"...give effect to the policies that were set out as part of the NHS's recommendations for legislative reform following the Long Term Plan and in the White Paper 'Integration and Innovation: Working together to improve Health and Social Care for all' published in February 2021.

The Bill aims to support Government in doing the following:

- Promoting local collaboration;*
- Reforming the NHS Provider Selection Regime;*
- Improving accountability and enhancing public confidence in the health and care system; and*
- Delivering a range of targeted measures to support people at all stages of life".¹*

3. The LCM

Overview

7. Paragraphs 3 to 5 of the LCM summarise the Bill and its policy objectives. Paragraphs 6 to 67 outline the provisions in the Bill for which Welsh Government believes Senedd consent is required. We explore issues relating to these provisions throughout our report.

The Welsh Government's position

8. The Welsh Government's views on the Bill, and on the appropriateness or otherwise of provisions for Wales being included, are set out in paragraphs 68 to 71 of the LCM.² The LCM

¹ UK Government, [Health and Care Bill: explanatory notes](#), July 2021

² In addition, the Minister for HSS gave evidence to the [House of Commons Health and Care Bill Committee on 7 September 2021](#).

states that the Welsh Government is not able to recommend consent to the Bill as introduced, and adds:

"68. The Welsh Government considers that although some of the provisions in the Bill have merit, for example in relation to obesity, food information for consumers and repealing redundant enactments (relating to patients' needs for care and support to be assessed before discharge from hospital), several of its provisions would have deleterious effects on the devolution settlement".³

9. The LCM states that the Welsh Government's particular concerns include provisions that would enable the Secretary of State to consequentially amend Senedd legislation, and potential negative implications of some provisions for NHS bodies in Wales. We asked the Minister for HSS to provide further details about the anticipated nature and extent of any potential negative implications. She explained:

"I am concerned about all the areas in the Bill I have identified as potentially impacting on the devolved settlement or on devolved bodies -and set out in the LCM- should we not secure the amendments being sought. It is difficult however to precisely quantify negative impacts until the powers in the Bill are being used. My officials are working to secure amendments which would have the effect of minimising potential negative impacts".⁴

10. The LCM further notes that discussions are continuing between the Welsh and UK Governments about some points of disagreement, and that a supplementary LCM may be brought forward in due course. The Minister for HSS said:

"To sum up overall at this point, I welcome the engagement that has taken place with the UK Government so far and that my officials are continuing with what I remain hopeful will be productive discussions and outcomes".⁵

³ Welsh Government, *Legislative Consent Memorandum: Health and Care Bill*, 1 September 2021

⁴ LCMHCB03 Welsh Government

⁵ LCMHCB03 Welsh Government

Supplementary LCM

11. The Minister for HSS noted in her letter of 19 October 2021 that she was aware of a number of potential amendments the UK Government was considering bringing forward, including one requested by the Welsh Government in respect of medical examiners. She advised that “should these amendments require the legislative consent of the Senedd, then a supplementary LCM will be laid before the Senedd at the appropriate time”.⁶

12. In her subsequent letter of 25 November 2021, she stated:

“...on 18 November, following constructive negotiations between my officials and officials in the Department of Health and Social Care, as well as between myself and the Minister of State for Health, the UK Government laid a number of amendments which address the majority of the key concerns of the Devolved Governments with regard to the Bill.

[...]

The amendments were voted through in the House of Commons on 23 November. I will therefore be tabling a Supplementary Legislative Consent Memorandum with regard to the Bill to reflect those changes.⁷

13. She also outlined a number of other amendments made to the Bill by the House of Commons that will be included within a supplementary LCM, including:

- Medical examiners, as noted in paragraph 11.
- Virginity testing.
- Reimbursement to community pharmacies.⁸

⁶ LCMHCB03 Welsh Government

⁷ Letter from the Minister for Health and Social Services, 25 November 2021

⁸ Letter from the Minister for Health and Social Services, 25 November 2021

4. Clause 85: medicines information systems

Background

14. Clause 85 creates a power for the Secretary of State to make regulations providing for a system of information regarding medicines to be established and operated by the Health and Social Care Information Centre (known as NHS Digital) to allow for the creation of centrally-held UK-wide medicine registries. The stated purpose of such registries is to provide a source of evidence on the use, safety and effectiveness of medicines, and to improve patient safety.

15. Medicinal products are reserved under Schedule 7A to the Government of Wales Act 2006 (“GOWA”). However, the power provided by clause 85 for the Secretary of State to make regulations making provision for the establishment and operation of information systems is a broad power, and the Welsh Government considers that the Senedd could legislate to give the Welsh Ministers some of the powers that are conferred on the Secretary of State in clause 85 (although not all of them). It is also possible that the regulations made by the Secretary of State will confer functions and/or obligations on Devolved Welsh Authorities.

Overlap with data gathering in Wales

16. The Minister for HSS stated in her letter of 19 October 2021 that she supported the inclusion in registries of routinely-collected data in order to improve human medicine safety, quality and efficacy. However, she believed that the purposes for which information could be collected were too broad, “extending beyond safety matters and into areas within devolved competence, such as information relating to clinical decision-making”. She suggested that the implications of this could include:

- Additional requirements and financial burdens for NHS bodies, GPs, pharmacies, schools and higher education establishments.
- Implications for primary care service contracts in Wales, with potential financial implications for the Welsh Government.⁹

17. The Minister for HSS also noted that Digital Health and Care Wales already has powers to collect information from existing systems in Wales, and argued that it was not therefore

⁹ LCMHCB03 Welsh Government

necessary for a UK-wide system to be established by an English body such as NHS Digital. She explained that her preferred approach would be:

- The establishment of a system for Wales that would contribute to the UK registry on the basis of “a set of agreed standards and specifications ensuring NHS Digital is only provided with the specific information on Welsh patients it needs for the specific purposes of the registries”.
- Amendments to the Bill to place duties on Welsh Ministers to enable the establishment of equivalent systems either through digital authorities in Wales or nominating NHS Digital to set up a system on their behalf.¹⁰

18. The Minister for HSS noted in her letter of 19 October 2021 that the Bill as introduced did not include any provision for the data to be used by Welsh Ministers for purposes within their competence.¹¹ This was also a concern for the Welsh NHS Confederation, which suggested that provision should be included to facilitate NHS Wales access to the data.¹²

19. However, in her letter of 25 November 2021, the Minister for HSS explained that amendments agreed by the House of Commons on 23 November 2021 had resulted in the Bill now requiring that secondary legislation made under clause 85 must “provide for information to be collected by the Welsh Ministers or a person designated by them such as Digital Health and Care Wales (DHCW), subject to specified exceptions in that secondary legislation”.¹³ The UK Minister similarly confirmed that the regulations would allow for data within “the devolved territories” to be collected by intermediary organisations.¹⁴

Inappropriate use of Welsh patient data

20. The Minister for HSS also expressed concerns in October 2021 about the potential for regulations made under clause 85 to enable broad use of Welsh patient data for purposes that may not be considered appropriate by the Welsh Ministers. She advised that discussions were still ongoing, but that she had requested that amendments to the Bill be brought forward to:

¹⁰ LCMHCB03 Welsh Government

¹¹ LCMHCB03 Welsh Government

¹² LCMHCB06 Welsh NHS Confederation

¹³ Letter from the Minister for Health and Social Services, 25 November 2021

¹⁴ Letter from the Minister for Health, 25 November 2021

"...provide for an intermediary (NHS Wales) organisation to collect data on behalf of Welsh Ministers, removal of the specific element allowing Welsh citizens' data to be used for clinical decision making once provided to NHS Digital, and allowing for the provision of pseudonymised data to NHS Digital".¹⁵

21. The Welsh NHS Confederation similarly raised concerns about the potential inappropriate use of Welsh patients' data:

"6. Whilst these seem reasonable provisions, the exception is Regulation 7A(2)(b). Under Regulation 7A(2)(b) healthcare organisations providing information that the Government decides is required could include information provided to the Information Centre for the purposes of its functions under the Regulations. The Health and Social Care Information Centre is already in existence (mainly in NHS England) where previously there has been concerns raised about data being collected from GPs in England, anonymised and then sold on. Patients can opt out (if they are aware of it).

7. The systems could be very useful for research into adverse drug reactions (ADRs) and improving prescribing, but potentially drug companies could be interested in access to such a large database. Therefore, Welsh Government should be given the power to make a decision on the use of its population data and to ensure that there are adequate safeguards in place. In addition, NHS Wales should have the ability to benefit from access to the data."¹⁶

22. In her letter of 25 November 2021, the Minister for HSS explained that amendments agreed by the House of Commons on 23 November 2021 would:

"...limit the scope of the purposes for which medicine information systems regulations can be made. The amendment makes it clear that any provision in the regulations for a purpose in relation to clinical decision making is only where there is a connection with the safety of such decisions relating to human medicines."¹⁷

¹⁵ LCMHCB03 Welsh Government

¹⁶ LCMHCB06 Welsh NHS Confederation

¹⁷ Letter from the Minister for Health and Social Services, 25 November 2021

23. The UK Minister explained that the change clarified the use of data, and restricted the wider use of information to clinical decision-making, while also ensuring that “where a safety risk for an individual or group is identified we can use that information to inform the use of the medicine in the clinical setting, for example to ensure risk-minimisation measures are followed”.¹⁸

Need for the consent of Welsh Ministers to regulations

24. The Welsh Ministers’ consent is not currently required for regulations made, or directions issued by the Secretary of State under clause 85, only their consultation. On the basis that such regulations could affect Wales, the Minister for HSS had requested that amendments be brought forward to require that regulations under clause 85 could only be made with the consent of Welsh Ministers. However, she explained in October 2021 that requiring consent would not be necessary should amendments be brought forward to give effect to her preferred alternative (outlined in paragraph 17). In her letter of 25 November 2021, she confirmed that her preferred alternative had been adopted, and that the consultation of Welsh Ministers was, therefore, an adequate safeguard in her view.¹⁹

25. In addition, the UK Minister stated in his letter of 25 November 2021 that amendments made to the consultation requirements would “provide a statutory requirement to ensure Welsh and Scottish Ministers will have meaningful input into the establishment and operation of medicine information systems where they related to Wales or Scotland, respectively”.²⁰

Our view

26. While we recognise the merits of a UK-wide medicine registry, it is vital that there are sufficient safeguards in place to protect Welsh patients’ personal and medical data, and ensure that it is used appropriately.

27. We therefore welcome the confirmation from the Minister for HSS in her letter of 25 November 2021 that amendments brought forward by the UK Government and agreed by the House of Commons on 23 November 2021 have addressed her concerns in respect of the gathering and use of Welsh patients’ data.

¹⁸ Letter from the Minister for Health, 25 November 2021

¹⁹ Letter from the Minister for Health and Social Services, 25 November 2021

²⁰ Letter from the Minister for Health, 25 November 2021

Conclusion 1. We have no objection to the Senedd giving its consent to the inclusion in the Bill of clause 85 (medicines information systems) as amended by the House of Commons on 23 November 2021.

5. Clauses 86-92: Arm's Length Bodies Transfer of Functions

Background

28. Clauses 86-92 provide the Secretary of State with regulation-making powers to transfer functions between "relevant bodies" and to delegate certain health functions of the Secretary of State to them. They therefore create a general power in primary legislation for the Secretary of State by regulation to transfer or merge functions and to abolish bodies where all functions have been transferred away. The relevant bodies are defined in clause 86 and are all health Non-Departmental Public Bodies.

29. The Minister for HSS told us that:

"Some of the Arm's Length Bodies in scope of the power undertake functions in Wales, Welsh Ministers have powers of direction in respect of some functions and Welsh Ministers have rights to appoint or nominate Welsh representation to them. Transferring or merging the functions of these bodies could therefore result in an erosion of Welsh Ministers' powers in relation to those bodies or impact on the functions of that body in Wales. The main bodies of concern are:

- *NHS Digital*
- *Health Research Authority*
- *Human Fertilisation and Embryology Authority*
- *Human Tissue Authority*
- *NHS Blood and Transplant*
- *NHS Business Services Authority".²¹*

²¹ LCMHCB03 Welsh Government

Cross-border functions of Special Health Authorities

30. Under clause 88, the Secretary of State may provide for arm's length bodies to exercise specified functions of the Secretary of State on their behalf if they are functions of the Secretary of State which relate to the health service in England or functions that the Secretary of State may provide for a Special Health Authority to exercise. The Minister for HSS told us that she had received reassurances from the UK Government that, in relation to cross-border Special Health Authorities, such as NHS Blood and Transplant, "this does not include functions that they are directed to exercise by the Welsh Ministers in relation to Wales".²²

Consultation with the Welsh Ministers on regulations made under clauses 87 and 88

31. If regulations are made under clauses 87 and 88 that would apply in Wales, clause 92 requires the Secretary of State to consult the Welsh Ministers. Clause 89 confers a Henry VIII power on the Secretary of State to make repealing, revoking or amending provision to Senedd legislation in regulations made by the Secretary of State under clauses 87 or 88, with no requirement for the Secretary of State to obtain the consent of the Senedd. However, the Statutory Instrument Consent Motion process under Standing Order 30A would be engaged and the Senedd's consent would therefore be required should any Statutory Instrument laid before the UK Parliament in relation to Wales, amend primary legislation within the legislative competence of the Senedd.

32. The Minister for HSS told us in October 2021 that "in order to protect the devolution settlement", she had requested amendments be made to the Bill to require that regulations made under clauses 87 and 88 should be subject to the consent of Welsh Ministers, not merely consultation. She also highlighted her concern in respect of the power to make consequential amendments to Welsh legislation, and noted that discussions on these matters were still ongoing.²³

33. The UK Minister told us that discussions were ongoing between officials across the four Governments in the UK on the drafting of a Memorandum of Understanding for how the consultation process would work, and that he was hopeful that agreement could be reached as the Bill passes through the UK Parliament.²⁴

²² LCMHCB03 Welsh Government

²³ LCMHCB03 Welsh Government

²⁴ Letter from the Minister for Health, 25 November 2021

Transfer of property etc

34. Clauses 90 and 91 relate to transfer schemes in connection with regulations made under clauses 87 and 88. In particular, clause 90 gives the Secretary of State powers to transfer property, rights and liabilities to the Welsh Ministers or Welsh NHS trusts. The Minister for HSS noted that she had “requested that Welsh Ministers and Welsh bodies are carved out of the Clause 90 provision and I am hopeful that this [will] happen”.²⁵

35. In her letter of 25 November 2021, the Minister for HSS provided further information about her concerns in respect of clause 90 as introduced:

“The clause is potentially problematic as although the UK Government included provision in the Bill at introduction (in clause 92) that a transfer would be subject to the consultation of Welsh Ministers, unwanted properties, rights or liabilities could be transferred to the Welsh Ministers, Local Health Boards or Welsh Special Health Authorities in respect of bodies over which the Welsh Ministers have no influence, with no option for the Welsh Ministers to prevent such a transfer, or to make such a transfer to UK Government. Officials did not envisage a scenario in which property, rights and liabilities of a body would need to be transferred to the Welsh Ministers in conjunction with a transfer of functions made under the powers in clauses 87 and 88. Officials in the Department of Health and Social Care agreed that this would be unlikely but the ability to do so in the Bill provisions was still an area of concern.”²⁶

36. She added that while constructive discussions between the UK and Welsh Governments had led to agreement on an amendment to remove Welsh Ministers, Welsh NHS Trusts and Welsh Special Health Authorities from clause 90, the amendment was not, in the end, tabled. The Minister for HSS explained that the reason for this was that agreement had not yet been reached with all Devolved Administrations on other amendments relating to the arm’s length bodies provisions, but that discussions on these matters were continuing.²⁷

37. The UK Minister similarly noted that while the Minister for HSS had indicated that she was content with the UK Government’s proposed package of amendments, agreement had not been reached with all three Devolved Administrations. He said that he “remain[ed] hopeful that

²⁵ LCMHCB03 Welsh Government

²⁶ Letter from the Minister for Health and Social Services, 25 November 2021

²⁷ Letter from the Minister for Health and Social Services, 25 November 2021

we will be able to reach agreement over the coming weeks ahead of the Bill’s Committee Stage in the House of Lords”.²⁸

Our view

38. We note the statement from the Minister for HSS regarding reassurances provided by the UK Government that the cross-border functions of Special Health Authorities in relation to Wales are not included within the scope of the powers under clause 88 for the Secretary of State to delegate specified functions to arm’s length bodies. However, a legislative commitment by way of amendment to the provisions of the Bill would provide greater reassurance than a non-legally binding assurance provided by the UK Government that could be disregarded by future Governments.

39. We note that there are still matters outstanding in respect of clauses 88-92 (arm’s length bodies transfer of functions), including in respect of the transfer of property etc. We also note that the Minister for HSS anticipates that these provisions may be the subject of a supplementary LCM to be brought forward in due course, and will consider these matters further at that point.

6. Clause 120: International healthcare arrangements

Background

40. Clause 120 amends the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 (HEEASAA) to enable the UK Government to implement healthcare agreements with countries, territories and international organisations via secondary legislation. Where the UK has in place an international healthcare agreement with another party, clause 120 can be used to fund healthcare that either falls within, or outside, the scope of that agreement.

41. Clause 120 would also broaden the geography of, and make permanent, existing temporary powers enabling the UK Government to authorise payments in European Economic Area countries and Switzerland for five years after the UK’s departure from the European Union. That temporary arrangement had been established (and made subject to a five year sunset provision) on the grounds of the need for speed and flexibility as the UK left the EU.

42. The UK Government states that the amendments to HEEASAA in clause 120 would:

²⁸ Letter from the Minister for Health, 25 November 2021

"...give the UK Government the opportunity to strengthen existing agreements and agree new reciprocal healthcare arrangements with more countries, subject to negotiations, where this is for the benefit of the people of the UK".²⁹

43. In addition to constituting a departure from the established constitutional convention that primary legislation is used to implement international agreements where such implementation requires changes to domestic legislation,³⁰ clause 120 would also provide very broad scope for the Secretary of State, in "exceptional circumstances", to make healthcare payments that fall outside of international healthcare agreements. The Bill does not define "exceptional circumstances", and places no limits on the amount or type of healthcare which may be funded.

44. The Hansard Society, in its analysis of clause 120, emphasises the departure from constitutional convention, the geographic and temporal limitations placed on the temporary powers by the UK Parliament during its scrutiny of the HEEASAA, and the lack of "clear and proportionate criteria for what constitutes 'exceptional circumstances' to justify payments in respect of healthcare overseas outside the scope of an international healthcare agreement". It notes that the use of the powers in clause 120 are subject only to the negative procedure, and concludes therefore that the use of the powers is:

"...unlikely to be debated or voted on by MPs in the future. In the absence of any definition about what might constitute 'exceptional circumstances', the potential scope for the use of the power is quite broad and again accords Ministers considerable discretion".³¹

45. Paragraph 10 of Schedule 7A to GOWA provides that foreign affairs and international relations are reserved matters. However, observing and implementing international obligations within devolved areas is not reserved. As this legislation relates to health, a devolved matter, the provisions inserted by clause 120 concerning making payments for healthcare overseas to give effect to healthcare agreements would fall within the exception to the reservation, and would therefore be within the Senedd's competence.

²⁹ UK Government, *Policy paper: Health and Care Bill: Reciprocal healthcare arrangements*, 19 July 2021

³⁰ The majority of international agreements are subject to scrutiny by the UK Parliament in accordance with a procedure established by the Constitutional Reform and Governance Act 2010. Under this procedure, the UK Parliament has 21 days in which to scrutinise and report on such agreements.

³¹ Hansard Society, *The Health and Care Bill: Delegated Powers*, 3 September 2021, p7

46. Other amendments include enabling the Secretary of State to confer functions on and/or delegate functions to public authorities, when making regulations to make provision for the purpose of giving effect to healthcare agreements. The definition of “public authority” includes the Welsh Ministers. The Senedd could legislate to confer a similar function on the Welsh Ministers.

47. The Welsh NHS Confederation said that the provision would give greater freedom for the UK Government to amend and repeal existing reciprocal arrangements with other countries. It suggested that over time the scope of data sharing, or the range of countries with whom data was being shared could increase if the UK were no longer bound by EU data legislation. It also noted that there would be flexibility in the scope of reciprocal arrangements, such as the inclusion or exclusion of particular types of care or services.³²

48. The Minister for HSS noted in her letter of 19 October 2021 that while international healthcare agreements are not devolved:

*“...the NHS in Wales has to manage incoming patients covered under all international healthcare arrangements. Any arrangements struck with other countries which are implemented under these provisions could lead to increased health tourism which could put pressure on, and impact the capacity of, our Local Health Boards”.*³³

49. Before making regulations under clause 120, the Secretary of State will be required to consult with the Welsh Ministers, as is currently required by existing legislation and a supplementary Memorandum of Understanding to be agreed between the UK Government and the Welsh Government. The Minister for HSS noted that one of her main concerns with clause 120 is that the requirement in respect of regulations giving effect to international healthcare agreements is one of consultation rather than consent. She stated that this means that any concerns the Welsh Government might have about “unreasonable or unfunded pressures on the NHS in Wales arising from such agreements” might not be taken into account.³⁴ The UK Minister said that officials from the four Governments in the UK were working together to develop the MoU for the operation of the consultation process, and that he was “hopeful that they will be finalised as the Bill continues to progress through the UK Parliament”.³⁵

³² LCMHCB06 Welsh NHS Confederation

³³ LCMHCB03 Welsh Government

³⁴ LCMHCB03 Welsh Government

³⁵ Letter from the Minister for Health, 25 November 2021

50. The Minister for HSS also described a further concern in respect of the power in the clause for the Secretary of State to confer functions on and/or delegate functions to the Welsh Ministers and public authorities in Wales, but stated that discussions on the wording of the provision is ongoing, and that she was “hopeful that a satisfactory position can be reached”.³⁶

51. In her letter of 25 November 2021, the Minister for HSS confirmed that she had reached agreement with the UK Government in respect of her concerns about clause 120. She noted that amendments had been made to:

- Provide that the Welsh Ministers, and other Welsh organisations other than health boards, were not included in the definition of “public authority” in respect of the Secretary of State’s power to delegate functions.
- Give a power to the Welsh Ministers to make regulations in devolved areas for the purpose of giving effect to health agreements. This power includes the power to confer functions on devolved Welsh organisations. Should the Welsh Ministers “fail to confer relevant functions onto the local health boards regarding healthcare agreements”, the Secretary of State may confer such functions.³⁷ The UK Minister suggested that it would also be appropriate for the Secretary of State to use the remaining, more limited power to confer functions on local health boards in Wales (and Scotland) in circumstances where “the Devolved Administrations may agree that it would be more efficient for the Secretary of State to implement agreements on their behalf”.³⁸

52. The UK Minister confirmed that the amendment made to clause 120 on 23 November 2021 by the House of Commons would give the Welsh Government “powers to make regulations in devolved areas, with the UK Government retaining the ability to make regulations to implement arrangements on their behalf”. He noted that while the Secretary of State would have a concurrent regulation-making power to implement reciprocal healthcare arrangements under section 2 of HEEASSA, the Welsh Government would have powers to make regulations in respect of reciprocal healthcare arrangements “it if is within their devolved competency to do so”.³⁹

³⁶ LCMHCB03 Welsh Government

³⁷ Letter from the Minister for Health and Social Services, 25 November 2021

³⁸ Letter from the Minister for Health, 25 November 2021

³⁹ Letter from the Minister for Health, 25 November 2021

Our view

53. We note the view of the Minister for HSS in her letter of 25 November 2021 that “the amendments are a significant shift from the position of the Bill as introduced and that they provide sufficient protection of the devolution settlement”.⁴⁰

54. However, the powers in clause 120 remain extremely broad, both in terms of the removal of the current geographical and temporal limits on the implementation of reciprocal healthcare agreements, and the lack of any limit on either the amount or type of healthcare that can be funded outside of an international healthcare agreement under ‘exceptional circumstances’. We agree with the Hansard Society that it would be preferable for the Bill to be amended to include a clear and proportionate test for what qualifies as an ‘exceptional circumstance’.

Recommendation 1. The Minister for Health and Social Services should make representations to the UK Government for an amendment to be brought forward to include on the face of the Bill a clear and proportionate test for what would qualify as an ‘exceptional circumstance’ for the purposes of the amount or type of healthcare that can be funded outside of an international healthcare agreement.

55. We also have some concerns about whether a non-statutory intergovernmental Memorandum of Understanding on the operation of the process by which Welsh Ministers are to be consulted on regulations under clause 120 to give effect to international healthcare agreements offers sufficient protection to the devolution settlement when it may not effectively bind successive UK Governments.

Recommendation 2. Before the Senedd is asked to decide whether or not to give its consent to the inclusion in the Bill of clause 120 (international healthcare agreements), the Minister for Health and Social Services should ensure that all Members have been provided with a copy of the final Memorandum of Understanding agreed between the UK Government and the Welsh Government in relation to the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019.

56. In addition, the use of secondary legislation for the implementation of international agreements will significantly reduce the scope for parliamentary scrutiny both by the UK Parliament, and, as health is a devolved matter, by the Senedd. Constitutional matters fall within the remit of the Legislation, Justice and Constitution Committee, and we encourage Members of the Senedd to consider carefully any conclusions and recommendations made by that

⁴⁰ Letter from the Minister for Health and Social Services, 25 November 2021

Committee in its report on the LCM before reaching a view on whether to consent to clause 120.

7. Clause 123: Regulation of health care and associated professions

Background

57. Clause 123 makes a number of amendments to section 60 and Schedule 3 of the Health Act 1999 Act (“the 1999 Act”) relating to the regulation of health professions. This includes an amendment that would amend the existing provision allowing an Order in Council to be made regulating “any other profession” concerned with the physical or mental health of individuals, so that the reference to a profession is treated as including “any group of workers who are concerned with the physical or mental health of individuals”, whether or not they are generally regarded as a profession.

58. The regulation of healthcare professions is a reserved matter under GOWA. However, the regulation of persons who are not professionals but who are concerned with the physical or mental health of individuals falls within devolved competence.

59. The Minister for HSS, in her letter of 25 November 2021, stated that the UK Government had advised that:

“...the provision is intended to clarify not change the existing position, and, at present, there is no intention to use this power to regulate any additional persons. I further understand that the provision is intended to target senior health managers and leaders in [the] event the UK Government wanted to regulate these in the future”.

60. She added that the Welsh Government had no plans to regulate senior health leaders and managers in Wales.⁴¹

61. The Welsh NHS Confederation suggested that the provision would allow the UK Government to deregulate a profession if it considered there was no public safety risk. It cautioned that in respect of pharmacy for example, this could lead to the abolition of the General Pharmaceutical Council in Wales, with loss of protection for the title of pharmacist or

⁴¹ Letter from the Minister for Health and Social Services, 25 November 2021

pharmacy technician and corresponding undermining of the profession.⁴² The protection of title of particular professions has also been a matter of concern to the Royal College of Nursing, which has backed a campaign calling for the title “nurse” to be reserved to nurses registered with the professional regulator.⁴³

62. The Health and Care Professions Council (“HCPC”) described the clause and the wider regulatory reform agenda as “an opportunity to improve professional regulation to the benefit of patients and service users, as well as registrants and the healthcare system in Wales, and across the UK”. The HCPC shared with us draft proposals for a new collaborative regulatory model which could be given effect by clause 123, and stated that such proposals could lead to the strengthening of the effectiveness and efficiency of regulation, “with consequential benefits to public protection and patient safety across the whole of the UK”.⁴⁴

63. The General Medical Council (“GMC”) and the Nursing and Midwifery Council (“NMC”) each broadly welcomed the provision, but highlighted a lack of clarity about implementation, including:

- The potential for some individuals in senior roles to be affected by regulation by more than one regulator, for example if senior managers or leaders were considered to be groups of workers it could include some nursing and midwifery roles.
- How the power to delegate functions will be implemented for individual regulators.
- The criteria that would be used to inform decisions about whether a profession no longer required regulation for the purposes of the protection of the public, and what consultation would take place to inform decisions.⁴⁵

64. The NMC noted that the UK Government intends to undertake a review exploring which professions need to be regulated, but called for:

⁴² LCMHCB06 Welsh NHS Confederation

⁴³ Royal College of Nursing, [RCN Council calls for further debate among members on crucial issue](#), 12 July 2021

⁴⁴ LCMHCB01 Health and Care Professions Council

⁴⁵ LCMHCB02 General Medical Council and LCMHCB04 Nursing and Midwifery Council

"...more information on the criteria that the [UK] Government will use for reviews of professional regulation in healthcare, and how it intends to engage and consult with the public and stakeholders before changes are made".⁴⁶

65. The Minister for HSS told us that the UK Government had proposed amending the Bill to include a requirement to consult the Welsh Ministers, supported by a Memorandum of Understanding, should the UK Government seek to make regulations under section 60 of the Health Act 1999 in areas of devolved competence. However, she had requested that such an amendment should provide instead that the consent of the Welsh Ministers should be required. She noted in October 2021 that "positive discussions in this area are continuing".⁴⁷

66. In her letter of 25 November 2021, the Minister for HSS explained that an amendment had been brought forward by the UK Government to provide that the Secretary of State must obtain the consent of the Welsh Ministers when "bringing into regulation in Wales a group of workers who are not professionals but are concerned with the physical or mental health of individuals, under Section 60 of the Health Act 1999".⁴⁸ The UK Minister stated:

"The UK Government recognises the legislative competence of Senedd Cymru in this area [the regulation of a group of workers concerned with the physical and mental health of individuals who are not generally regarded as a profession] and is respecting the devolution settlement in making this amendment."⁴⁹

Our view

67. Professional regulation plays a vital role in ensuring that our health and social care services are safe. It is crucial that there is clarity for the public and the health and social care workforce about how clause 123 will be implemented, in particular the criteria that will underpin decisions and the consultation that will take place.

68. We welcome the confirmation from the Minister for HSS that the Bill has been amended to provide that the consent of the Welsh Ministers will be required when exercising in relation to

⁴⁶ LCMHCB04 Nursing and Midwifery Council

⁴⁷ LCMHCB03 Welsh Government

⁴⁸ Letter from the Minister for Health and Social Services, 25 November 2021

⁴⁹ Letter from the Minister for Health, 25 November 2021

Wales the regulation-making power under clause 123 as it relates to groups of workers concerned with the physical or mental health of individuals.

Conclusion 2. We have no objection to the Senedd giving its consent to the inclusion in the Bill of clause 123 (regulation of health care and associated professions) as amended by the House of Commons on 23 November 2021.

69. We note the evidence from the Minister for HSS that the Welsh Government currently has no plans to regulate senior health leaders and managers in Wales. Given the importance of these roles within the health and social care sector, we would welcome further information from the Minister on the rationale for this.

Recommendation 3. The Minister for Health and Social Services should outline what analysis has been undertaken by the Welsh Government of the risks and benefits associated with regulating, or not regulating, senior health leaders and managers in Wales, and what the rationale is for her decision not to introduce such regulation.

8. Consequential powers, and consultation with the Welsh Ministers on the exercise of powers

Background

70. Several provisions within the Bill as introduced would enable the Secretary of State to exercise powers in relation to Wales in respect of areas within devolved competence after consulting the Welsh Ministers. This includes:

- Regulations made under clause 85 in respect of the establishment of medicines information systems, where such regulations impact Wales.⁵⁰
- Where the relevant regulations would apply in Wales, regulations made by the Secretary of State under clauses 87 and 88 to transfer functions to or from arm's length bodies or to provide for such bodies to exercise specified functions of the Secretary of State.

⁵⁰ The Minister for HSS indicated in her letter of 25 November 2021 that, as a result of other amendments made to clause 85, she was content that consultation with the Welsh Ministers was now an adequate safeguard.

- Draft regulations made under clause 120 giving effect to international healthcare agreements.
- Regulations made under clause 123 in respect of the regulation of health care and associated professions.⁵¹

71. The Minister for HSS told us that:

"The preferred approach of the UK Government for clauses of this nature is that the requirement for consultation of Welsh Ministers is accompanied by a separate intergovernmental agreement setting out how that will work. That is not my preferred approach given that the agreements are not legally binding and can be disregarded by future Governments".⁵²

72. The Bill also contains a number of provisions that would enable the Secretary of State to make consequential amendments to provisions in a Measure or Act of the Senedd. For example, this includes:

- Specific provision in clauses 89(6) (which would enable the Secretary of State to make repealing, revoking or amending provision to Senedd legislation in relation to regulations made under clauses 87 and 88 on the transfer of functions to arm's length bodies) and 125 (which amends the Communications Act 2003 to enable the Secretary of State to make consequential provision by way of Regulations which amend, repeal or revoke provisions of an Act or Measure of the Senedd, or secondary legislation made under such provisions or under an Act of Parliament. This power is limited to extending the prohibition on placing or arranging online advertising to persons not already covered under Part C of the Communications Act 2003).
- A general, Bill-wide power in clause 130 for the Secretary of State, by regulations, to make provision consequential on the Bill. This includes provision to amend, repeal, revoke or otherwise modify any provision within the Bill or any provision made by, or under, an Act or Measure of the Senedd. The provision is Bill-wide, meaning that the

⁵¹ The Bill was amended by the House of Commons on 23 November 2021 to provide that the Welsh Ministers' consent is required when bringing into regulation in Wales under section 60 of the Health Act 1999 a group of workers who are not professionals but are concerned with the physical or mental health of individuals.

⁵² LCMHCB03 Welsh Government

Secretary of State could exercise this consequential power in relation to any aspect of the Bill so as to amend Senedd legislation without recourse to the Welsh Ministers.

73. The Statutory Instrument Consent Motion process under Standing Order 30A would be engaged and the Senedd's consent would be required should any Statutory Instrument laid under these powers before the UK Parliament in relation to Wales, amend primary legislation within the legislative competence of the Senedd.

74. The UK Government has not identified clauses 125 or 130 as clauses requiring the legislative consent of the Senedd. Nevertheless, in his letter of 25 November 2021, the UK Minister explained how he anticipated clause 130 being used:

"Clause 134 [clause 130 of the Bill as introduced] enables the UK Government to make consequential amendments that might be necessary following the passage of the Bill, including to devolved legislation. The consequential amendments we envisage will include numerous amendments to secondary legislation as a consequence of the Bill's provisions, as such amendments were not included on the face of the Bill.

It is also prudent to retain a power to amend primary legislation in the event that anything has been missed. This would allow, for example, the updating of names of particular bodies – minor changes that, if left unaddressed, could prevent the effective operation of the legislation.

This type of power is quite common in a Bill as large as the Health and Care Bill, and there are many examples of similar powers in legislation already on the statute book and so I hope that the Committee are reassured that this is simply a useful power to ensure the statute book works effectively. The Welsh Government will obviously retain the ability to make such legislative changes to devolved legislation if they so choose."⁵³

75. However, the Minister for HSS told us in October 2021 that such powers were among her "main areas of concern with the Bill". She explained that her officials were exploring potential options with officials at the UK Government's Department for Health and Social Care, and that she "remain[ed] hopeful" that agreement could be reached.⁵⁴

⁵³ Letter from the Minister for Health, 25 November 2021

⁵⁴ LCMHCB03 Welsh Government

76. In her letter of 25 November 2021, the Minister for HSS stated that she and her officials had held further discussions with the UK Government and that:

"The UK Government are of the view that these are standard clauses and that we similarly take powers in Senedd Acts to make consequential amendments to UK Government legislation.

UK Government officials have provided examples of how these powers may be used—the amendments likely would be of a minor nature, for example the changing of the name of an English organisation which is referred to in Senedd legislation where a transfer of functions has occurred and Minister Argar has also given a written commitment to making a Despatch Box statement on how these powers might be used."⁵⁵

Our view

77. The principle of whether Welsh Ministers should be consulted on the use by the Secretary of State of powers included in the Bill or whether the Senedd's consent should be required remains a significant issue in respect of a number of clauses. We welcome the indication from the Minister for HSS in her letter of 19 October 2021 that she "remain[s] hopeful" of reaching agreement". We agree with her that the inclusion on the face of the Bill of consent requirements would not only provide protections for the devolution settlement in the longer term regardless of the governments that are in power, but would also provide greater transparency than could be achieved through the development of separate intergovernmental agreements.

78. It is not appropriate that primary legislation which has been subject to the full scrutiny and agreement of the Senedd should be amended in any substantive way, by secondary legislation brought forward by UK Ministers, without consent.

79. We also share the Minister for HSS' concerns about the inclusion in the Bill of the general, Bill-wide power in clause 130 to make consequential provision, including amending, repealing or revoking an Act or Measure of the Senedd. There are no restrictions on the face of the Bill which prevent UK Ministers from making amendments to the Government of Wales Act 2006 or Senedd legislation.

80. We have noted above in earlier paragraphs that the Statutory Instrument Consent Motion process under Standing Order 30A would be engaged and the Senedd's consent would be

⁵⁵ Letter from the Minister for Health and Social Services, 25 November 2021

required should any Statutory Instrument laid before the UK Parliament in relation to Wales, amend primary legislation within the legislative competence of the Senedd.

81. We note that the Minister for HSS, as at 25 November, was still considering whether the assurance she had received on the proposed use of these powers reduced the risks of their inclusion in the Bill to an acceptable level.

Recommendation 4. Before the Senedd is asked whether to give its consent to the Bill, the Minister for Health and Social Services should provide a further update on her discussions with the UK Government on the consequential amendment powers in clauses 89, 125 and 130 of the Bill (as introduced), including whether, in her view, the assurances she has received from the UK Government in respect of the proposed use of the powers reduce the associated risks to acceptable levels.

9. Other provisions

82. The LCM outlines nine provisions in the Bill for which the Senedd's consent is required. In this report we have focused primarily on those provisions that give rise to more significant issues or concerns. We have not heard any concerns in respect of the implications of the following provisions, or about their inclusion in UK legislation, and therefore have no objection to the Senedd giving its consent:

- **Clause 75: Tidying up etc provisions about accounts of certain NHS bodies**
This clause inserts a new section into the National Health Service Act 2006 which would place obligations on Special Health Authorities ("SHAs") in relation to their accounts and auditing, and provide that the Secretary of State may give directions to a SHA on the form in which its accounts must be kept. The Minister explained that she does not expect any conflict between this provision and the exercise of the England/Wales Special Health Authorities' functions, for example the requirement under section 86 of GOWA for the Annual Report and Accounts of NHS Blood and Transplant to be laid before the Senedd.
- **Clause 78: Hospital patients with care and support needs: repeals etc**
This clause repeals the Community Care (Delayed Discharges etc) Act 2003 ("the 2003 Act"), which applies to England and to Wales. The relevant provisions in the 2003 Act have not been commenced in relation to Wales and the Welsh Government has indicated it has no policy intention to do so. The provision therefore removes redundant legislative provisions.

- **Clause 127: Food information for consumers - power to amend retained EU law**
This clause introduces new sections into the Food Safety Act 1990 to enable regulations made under section 16(1)(e) of that Act to in turn make amendments to the retained Regulation (EU) No. 1169/2011 on the provision of food information to consumers. Section 16 of the Food Safety Act 1990 is exercisable by the Secretary of State (in relation to England), the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales). This will allow the Welsh Ministers to deliver a number of Welsh Government policy proposals on tackling obesity, which may require the amendment of this retained legislation.

Conclusion 3. We have no objection to the Senedd giving its consent to the inclusion in the Bill of clauses 75 (Tidying up etc provisions about accounts of certain NHS bodies), 78 (Hospital patients with care and support needs: repeals etc) and 127 (Food information for consumers - power to amend retained EU law).

10. Financial implications

83. The LCM notes that the provisions of the Bill for which the Senedd's consent is required give rise to potential financial implications for the Welsh Government and Welsh health bodies. However, it explained that it is not possible at this stage to assess the financial implications until decisions are taken by the UK Government on implementation. The Minister for HSS reiterated this position in her letter to us in October 2021:

"With regard to the provisions covered by the LCM, while areas of risk to Wales (such as potential increased costs to our Local Health Boards from International Healthcare Agreements) have been identified, once again, these are at present unquantifiable as we have no detail on the nature of any such planned agreements and what treatment they will include".⁵⁶

84. The Welsh NHS Confederation stated that its members were operating on the assumption that the financial implications for NHS bodies in Wales associated with any new reciprocal health care arrangements would be mitigated by the UK and Welsh Governments.⁵⁷

⁵⁶ LCMHCB03 Welsh Government

⁵⁷ LCMHCB06 Welsh NHS Confederation

85. The Minister for HSS advised that under the Statement of Funding Policy there was agreement that costs arising from Acts of the UK Parliament would be met by the UK Government. She noted that she had written to the UK Minister to seek specific reassurance that the costs falling to Wales as a result of this Bill would be met by the UK Government, and that officials were discussing the appropriate reimbursement mechanism.⁵⁸ In her letter of 25 November 2021, she stated:

"There have been continuing discussions with UK Government regarding costs, and I have received some assurances. Broadly, Minister Argar has confirmed that the Barnett Formula will apply to additional costs arising from provisions in the Bill impacting on Wales as set out in the Statement of Funding Policy.

In relation to reciprocal healthcare specifically, the UK Government has confirmed that it will continue to fund the costs of treatment provided overseas to Wales' residents under any new healthcare agreements."⁵⁹

86. In his letter to us, the UK Minister stated that:

"The UK Government commits to consult with the Welsh Government on future potential cost implications in Wales when regulations are to be drafted and during the process of the Bill's implementation. We are fully committed to working with all of the Devolved Administrations to ensure smooth implementation of the provisions of the Bill and HMT have confirmed that the Barnett formula will apply, as set out in the Statement of Funding Policy."⁶⁰

Our view

87. We welcome the assurances received by the Minister for HSS that the costs for Wales arising from the Bill would be met by the UK Government in line with the Statement of Funding Policy, and that costs relating to treatment provided overseas to Welsh residents under any new healthcare agreements will also be met by the UK Government.

⁵⁸ LCMHCB03 Welsh Government

⁵⁹ Letter from the Minister for Health and Social Services, 25 November 2021

⁶⁰ Letter from the Minister for Health, 25 November 2021

11. Implications for Wales of the restructuring of the NHS in England proposed by the Bill

88. Part 1 of the Bill makes provision for the health service in England, including integration, collaboration and other changes. While the Senedd's consent is not required in respect of these provisions, we asked the Minister for HSS about the Welsh Government's view on any implications such restructuring might have for Wales, including any potential cross-border issues, employment issues, or issues relating to the commissioning of services for Welsh patients from NHS England such as mental health in-patient care or cancer services.

89. The Minister for HSS told us:

"There is a possibility that secondary and tertiary (specialist) services provided to Welsh patients in England may be impacted, for example planned care procedures undertaken by English trusts. For example, a potential risk identified by Welsh Government was in the event of multiple Integrated Care Systems collaboratively commissioning from a provider/ providers in a specific geographic area, the availability of service capacity for Welsh Health Boards to commission for Welsh patients may be reduced.

However, though there is potential for impact on secondary and tertiary services, on the basis of the information currently available it is anticipated that there is limited likelihood of any adverse impact with regard to the commissioning of these services."⁶¹

90. She noted that Welsh and English health bodies worked closely together, including the Welsh Health Specialised Services Committee and NHS England, to ensure that "the requirements of Welsh patients are taken into account in decisions relating to specialised services". She said that the UK Government's Department of Health and Social Care had confirmed that Welsh Government officials would be formally involved in the development of guidance associated with secondary care service commissioning proposals. The Minister added that:

"It is not anticipated that the restructure in England [...] will affect the development and delivery of cross-border care and support services in Wales. It is anticipated that

⁶¹ LCMHCB03 Welsh Government

*people will continue to receive services as they currently do now, particularly so in respect of those who receive cross-border care and support services.*⁶²

Our view

91. Many people in Wales receive health services on a cross-border basis, and we therefore welcome the assurances provided by the Minister for HSS that there is “limited likelihood of any adverse impact” on the commissioning or provision of services for patients in Wales as a result of the proposed restructuring of the NHS in England. We also welcome the information that Welsh Government officials will be involved in the development of guidance associated with secondary care service commissioning proposals.

12. LCM process and procedure

Scrutiny timetable

92. Standing Order 29.4 provides that the Business Committee must normally refer LCMs to a committee or committees for scrutiny, and must establish and publish a timetable for consideration and reporting. On 14 September 2021, the Business Committee referred the LCM to the Health and Social Care Committee and the Legislation, Justice and Constitution Committee (the “LJC Committee”) for consideration. Current practice is that the reporting deadline should allow a minimum of six sitting weeks for scrutiny, and the Business Committee subsequently set a reporting deadline of 4 November 2021.

93. We wrote to the Business Committee on 17 September 2021 to request an extension to the reporting deadline, on the basis that the Welsh Government had not yet indicated when it would be tabling a debate on the LCM, and the meeting time available to us in the committee timetable would otherwise provide insufficient opportunities for us to seek and consider written evidence from the Welsh and UK Governments and from stakeholders. The Business Committee agreed our request, and extended the reporting deadline to 11 November 2021. Following further correspondence from the LJC Committee, on 4 November 2021 Business Committee subsequently agreed a further extension to 16 December 2021.

Timing and content of the LCM

94. Standing Order 29.2(i) requires an LCM to be laid normally no later than two weeks after the introduction to the UK Parliament of the relevant Bill. The Health and Care Bill was

⁶² LCMHCB03 Welsh Government

introduced to the UK Parliament on 6 July 2021, but the Welsh Government did not lay the LCM before the Senedd until 1 September 2021. We asked the Minister for HSS to provide us with an outline of the reasons for this delay.

95. She told us that:

"The UK Department of Health and Social Care was very slow in providing us with draft Bill clauses for our consideration and analysis.

At the point of introduction of the Bill on 6 July 2021, we still had not seen all the draft clauses or amended versions of previously shared clauses. In addition, the full finalised Bill was only made available to us the day prior to its introduction. This made it impossible for officials to complete a full and thorough analysis of the Bill for its impact on Wales and any requirement for the legislative consent of the Senedd within the normal two week deadline.

Though my officials completed the work as quickly as possible, the emphasis was on ensuring a thorough analysis of the Bill had been undertaken and all the issues of impact and concern for Wales and the areas requiring the legislative consent of the Senedd had been identified".⁶³

96. The UK Minister, in contrast, told us in his letter of 25 November 2021 that his officials had been "in regular dialogue with officials in the Welsh Government since early February and engaged positively and constructively on all the draft clauses when they were shared in advance of the Bill's introduction".⁶⁴

Our view

97. LCMs are the mechanism by which the Senedd is asked to agree to the UK Parliament legislating on its behalf in areas of devolved competence. Were such provisions to be included within Acts of the Senedd, they would be subject to a four-stage scrutiny process usually lasting many months and enabling full and detailed consideration and engagement with stakeholders on the provisions and their potential implications. While the terms of reference for our scrutiny of LCMs are naturally focused on specific elements of the Bill in question, and the scope available to us for evidence gathering and deliberation is necessarily curtailed by the constraints of the UK Parliament's timetable, the importance of the Senedd's role in scrutinising LCMs

⁶³ LCMHCB03 Welsh Government

⁶⁴ Letter from the Minister for Health, 25 November 2021

should not be overlooked or undervalued. This is particularly the case for Bills containing numerous provisions for which consent is required, where the issues are complex or controversial, or on which the Welsh and UK Governments take different views.

98. We are grateful to Business Committee for agreeing the two extensions to the reporting deadline. The additional time has enabled us to seek further evidence to inform our scrutiny. However, it would have been preferable, and conducive to more effective scrutiny, had the initial reporting deadline taken greater account of both the very early stage the Bill was at in its passage through the UK Parliament, and the timescales associated with gathering and giving due consideration to evidence from stakeholders.

99. Our view is that as a matter of course the maximum amount of time possible should be made available for scrutiny of LCMs, and, therefore, that the minimum allocation of six sitting weeks should only be applied when circumstances rule out the allocation of longer scrutiny periods and reporting deadlines. We welcome, therefore, the Business Committee's decision of 28 September 2021 to ask Senedd and Welsh Government officials to look at how LCM reporting deadlines are proposed for Business Committee consideration.

100. We are also grateful to the Minister for HSS for explaining the reasons for the delay in laying the LCM before the Senedd. We recognise that analysis of a Bill of this size and complexity takes time. We also welcome the further detail provided by the Minister for HSS in her letters of 19 October 2021 and 25 November 2021 about the issues in the LCM, the Welsh Government's concerns about specific provisions, and the remedies the Minister is seeking from the UK Government. However, especially as there was such a delay before the LCM was laid, we believe that much of this information (where it related to the provisions of the Bill as introduced) could, and should, have been provided within the LCM itself rather than on our request at a later date.

Recommendation 5. The Welsh Government should ensure that LCMs are normally laid no more than two weeks after a Bill is introduced in accordance with Standing Order 29.2(i). Should circumstances require a delay before an LCM is laid, the relevant Minister should write to the appropriate Senedd committees to provide an estimate of when the LCM will be brought forward.

Recommendation 6. The Welsh Government should ensure that the LCMs it lays provide the relevant committees with sufficient information about the Welsh Government's position, its concerns, any remedies it is seeking, and such other matters as may be appropriate to enable full and effective scrutiny.