

	The Welsh NHS Confederation response to the External Affairs and Additional Legislation Committee inquiry into Exiting the European Union: Preparedness in Wales for the end of the Transition Period
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### **Introduction**

1. The Welsh NHS Confederation, which represents the seven Health Boards, three NHS Trusts in Wales and Health Education and Improvement Wales, welcomes the opportunity to comment further on Wales' preparedness for exiting the European Union.
2. With the EU and UK at a pinacol point in the negotiation process, developments continue to happen weekly between the EU and the UK Government, and the Welsh Government (WG), with engagement and information shared between the WG and NHS and social care organisations in Wales.
3. The Welsh NHS Confederation has previously provided detailed responses to the External Affairs and Additional Legislation (EAAL) Committee inquiries into Brexit, namely:
  - In November 2016 we provided a written response to the EAAL Committee consultation on the implications for Wales of Britain exiting the European Union.
  - In October 2017 we provided a written response and gave oral evidence to the EAAL Committee inquiry into resilience and preparedness: The WG's administrative and financial response to Brexit.
  - In January 2018 we attended and provided evidence to the EAAL Committee roundtable discussing the implications of Brexit for Wales.
  - In February 2018 we responded to EAAL Committee inquiry into Wales' future relationship with the European Union.
  - In September 2018 we responded to the EAAL Committee follow-up inquiry into how the WG is preparing for Brexit.
  - In September 2019 we responded to the EAAL Committee inquiry into the changes to free movement after Brexit and the implications for Wales.
  - In November 2019 we attended and provided evidence to the EAAL Committee oral evidence session for Brexit preparedness.
4. Our response on this occasion highlights the key developments following our last written response in September 2019 and provides an update on how the WG and the NHS in Wales are preparing for the end of the Transition Period. The major risks of leaving the Transition Period are the same as highlighted in our previous evidence to the Committee, with the additional context of COVID-19 and winter pressures.
5. The concurrent events of EU Transition, continued response to COVID-19, and winter pressures could have a large impact on both the staff and services of the Welsh NHS. There is immense pressure on the system which is impacting staff resilience and wellbeing for both the frontline response and emergency preparedness.

### **Welsh Government action to prepare Wales for the end of the transition period**

6. Since the referendum in June 2016, the WG has engaged with health and care bodies to identify areas that may be affected by leaving the EU. Leaving the EU has been discussed at a number of strategic meetings including in the NHS Executive Board, which is Chaired by the Director General for Health and Social Services and the NHS Wales Chief Executive, the WG Health and Social Care EU Transition Leadership Group and the Wales NHS Partnership Forum.
7. The Welsh NHS Confederation and our members have been working with WG officials to consider and assess the scale of the impact for Welsh health and social care services post-EU exit, including contingency options. Since October 2017, the Welsh NHS Confederation has agreed, on behalf of our members, to be the main contact for coordinating specific Brexit actions across NHS organisations and working with the WG. This work is intended to support discussions on managing risks effectively within health and social care and supports the development of a shared work programme considering priority areas including; workforce, professional qualifications, reciprocal healthcare, regulatory issues, medicines, research and innovation, procurement and competition law, public health, disease prevention and employment rights. Other relevant areas will also be considered as they arise.
8. Since our previous written submission in September 2019, the WG Health and Social Care EU Transition Leadership Group has continued to meet regularly, of which the Welsh NHS Confederation is a member of. The Group usually meets monthly, but in the lead up to a potential no-deal situation at the end of 2019, the Group met fortnightly and fed back into a number of subgroups, including Senior Responsible Officers (SROs) to discuss operational readiness, the health securities group, and the communications group.
9. While subgroups met in November 2019 and were stood down once a Withdrawal Agreement was finalised, the Leadership Group continued to meet until March 2020. The Leadership Group did not meet in April, May, or June 2020 due to the beginning of the Coronavirus (COVID-19) pandemic. The Leadership Group was reinstated in July 2020 and all other subgroups were stood up in September 2020. Since October 2020, all groups are meeting fortnightly to discuss preparations for the end of the Transition Period.
10. The Terms of Reference for all groups were updated in August/September 2020. The vision of the Leadership Group is to *“maintain strategic oversight of arrangements and preparations for EU Transition for Health & Social Care, including risks and mitigation actions, pre and post-EU Exit; maintain a watching brief on other policy areas, including through engagement in wider WG EU Transition governance structures; and be cognisant of the impacts of external factors and their relevance to EU transition issues (such as impacts of COVID-19)”*.
11. The purpose of the Leadership Group is to oversee and provide advice on: the challenges associated with EU transition for health and social care, including potential impacts of EU transition on services and outcomes for people and patients; the development of appropriate responses to address the challenges and potential impacts, and co-ordinated actions by service providers and partners; the status of contingency planning for different

credible scenarios, including the scenario of no agreement on the future UK/EU relationship being reached by the end of the Transition Period; encouraging effective and co-ordinated communication by service providers and partners, with the public and other stakeholders; and the potential long-term impacts of EU transition on health and well-being in Wales, taking into account wider factors where relevant to EU transition.

12. WG also host a Contingency Group and Ministerial Advisory Group. The Contingency Group met in September 2020 and will meet again in October 2020. In this Group, stakeholders come together and discuss the preparations in place at a Wales and UK scale in areas such as risk assessments, medicines, medical devices and clinical consumables, social services, and organisational updates. The Ministerial Advisory Group, which last met in October 2020, is comprised of a wide variety of stakeholders across the health and social care sector and advises the Minister for Health and Social Services and Deputy Minister on key updates and concerns.

### **UK Government action to prepare for the end of the transition period**

13. On 3 August 2020<sup>i</sup>, the UK Government published a letter from the Department of Health and Social Care<sup>ii</sup> (DHSC) to medicine suppliers setting out the UK Government's plan, and requests of industry and the wider supply chain ahead of the end of the Transition Period to help ensure the continuity of supply of medical goods into and out of the UK. The letter advised medicine suppliers to stockpile six weeks' worth of drugs to guard against disruption at the end of the Transition Period and to make boosting reserves a priority. It also reiterated that ministers will not be asking for an extension to the Transition Period past 31 December 2020, despite the COVID-19 pandemic, so suppliers should plan for all scenarios, including disruption to usual trading routes with the EU.
14. Also, on 3 August the UK Government published guidance on what healthcare services can do to prepare<sup>iii</sup> for 1 January 2021 and is aimed at commissioners and healthcare providers, including hospitals, care homes, GP practices and community pharmacies. It covers advice, contacts and actions to help to plan for and manage potential service disruption around the supply of medical products, business continuity, workforce issues such as recognition of professional qualifications and EU settlement scheme applications, and EU funding through the Third Health Programme.
15. On 1 September 2020 the Medicines and Healthcare products Regulatory Agency (MHRA) published guidance<sup>iv</sup> for the pharmaceutical industry and organisations on how to operate from 1 January 2021 (including on licensing of medicines and devices, clinical trials, importing and exporting medicinal products, pharmacovigilance procedures and new IT systems).
16. The scheme also includes separate arrangements for the air freight of medicines<sup>v</sup>. The UK Government is working closely with companies who provide medicines in the UK to ensure patients continue to get the medicines they need and are working with the WG to ensure appropriate measures are taken for Wales.

### Key issues for health and social care

17. As previously highlighted to the Committee, there are several issues for health and social care organisations as the UK prepares to end the Transition Period. Due to the issues being a concern for a range of health and social care organisations the Welsh NHS Confederation's Policy Forum published a briefing in June 2018, "*The key issues for health and social care organisations as the UK prepares to leave the European Union*"<sup>vi</sup>, which was endorsed by 20 organisations and updated in February 2020. The updated Policy Forum briefing is submitted with this written response because it puts forward the desired outcomes for the end of the Transition Period for health and social care organisations in Wales.

18. The outcomes highlighted with the briefing include:

- A continued domestic and international pipeline of high calibre professionals and trainees in health and social care to deliver sustainable NHS, social care, and independent health services to ensure the best care for our communities and people who use our services.
- Continued recognition of professional qualifications for people trained in the EU27 and mechanisms to alert each other of health and social care professionals who are prohibited or restricted to practice.
- Protection of workers' employment rights and patients' rights post-EU exit.
- Health and social care organisations across the UK continuing to participate in EU collaborative programmes, and lead and contribute positively to European Reference Networks and other collaborative EU networks, such as those which support medical research, post-EU exit.
- Patients continue to benefit from early access to the wide range of innovative health technologies available on the EU market and not miss out on participation in EU clinical trials.
- Regulatory alignment for the benefit of patients and the public's health, so that UK patients continue to have early access to the wide range of innovative health technologies available.
- Reciprocal healthcare arrangements preserved.
- Robust coordination mechanisms on public health and wellbeing with the same or higher level of safety guaranteed through domestic standards and regulations.
- A strong funding commitment to the healthcare sector, promoting solutions to minimise any additional pressures which may result from Brexit, as well as advocating for any loss of EU funds to be offset by alternative funding.
- Continued engagement between the WG and the UK Government to ensure the interests of the health and social care sector in Wales are safeguarded during the withdrawal process and beyond.

19. At the time of drafting, the recent statement<sup>vii</sup> from the Prime Minister indicated the UK should '*get ready*' for a no-deal or Australia-style trade deal if an agreement cannot be reached in the next few weeks with the EU. As will be detailed below, the NHS in Wales is well prepared and rehearsed if the UK leaves the Transition Period without an FTA with the EU. However, uncertainty will remain into the beginning of November if a '*light*' deal could be reached.

20. As part of the letter in September 2020, the Director General for Health and Social Care Services and the NHS Wales Chief Executive wrote to NHS Wales organisations outlining what should be included in COVID-19 Operating Framework for Q3/Q4 2020-21, and the EU Transition was a cross-cutting theme. Work is ongoing to ensure response and management systems for COVID-19, EU Transition and winter planning are dovetailed as much as possible to reduce burdens and remove duplication for staff and the service.
21. In addition, leaving the Transition Period without an agreed FTA was re-added to all NHS organisations risk registers in July 2020 and internal planning processes within individual NHS organisations have been stood up. The WG NHS Executive Board continues to receive regular updates on EU Transition throughout the Transition Period.
22. At a Wales and UK level, many of the structures in place previously to manage a possible no-deal situation remain in place and relevant now. Since these management structures were in place pre-COVID and were tested throughout the COVID-19 response, groups across Wales and the UK have been able to incorporate any lessons learned in response to COVID-19 to ensure a robust response that avoids duplication and additional burdens.
23. Specifically concerning medicines, NHS Chief Pharmacists meet weekly and regularly liaise with the WG and NHS Wales Shared Service Partnership to manage supply issues and are actively linked into planning groups. Work is ongoing with the UK Government to identify if there are any at-risk medicines at a supplier level, determine if there are any consequences for medicines planning in Wales, and ensure prescribing behaviour is consistent with the latest recommendations and communications from the WG.

#### **Brexit, winter planning, and COVID-19**

24. This year, the NHS is dealing with the concurrent events of normal winter pressures while continuing to respond to COVID-19 and preparing for the uncertainties of the end of the Transition Period. These concurrent events have impacted on staff resilience, both in terms of frontline response and emergency preparedness. The same staff across health and social care who are responsible for planning for the end of the Transition Period are managing COVID-19 and winter preparedness, including vaccine readiness. There is immense pressure on the system, and our members are concerned about the impact this may have on staff resilience, burnout, and the need for additional wellbeing support.
25. Since the last time we responded to the Committee, the most significant impact in the process of negotiating an FTA with the EU has been the international response to the COVID-19 pandemic. Since March 2020, the UK, WG and the NHS have been responding to a level of unprecedented demand due to COVID-19. In May 2020 we responded to the Health, Social Care and Sport Committee's [inquiry](#) into the COVID-19 response.
26. From March 2020, the majority of people and economic resources and attention at a political and service level have been focused on responding to the pandemic. This has meant that the negotiations between the two sides were paused to respond to COVID-19.

27. The deadline for the UK Government to request an extension to the Transition Period was 30 June 2020. Organisations such as the British Medical Association (BMA) voiced<sup>viii</sup> concerns that the COVID-19 response had contributed to a lack of progress in the negotiations, and that the UK Government should seek to extend the Transition Period. Despite these calls, the Transition Period was not extended.
28. Since health is not an outright pillar of the negotiations and instead is weaved into other areas, such as reciprocal healthcare rights within social security arrangements, major obstacles in areas such as governance arrangement and fisheries have limited the overall progress of the negotiations. The EU does not want 'mini deals' and instead wants one arrangement to cover all areas and want to agree the principles of agreements before deciding on the detail of legal texts.
29. The Welsh NHS must manage a three-tier situation: preparations for the end of the Transition Period, seasonal winter planning and flu vaccinations, as well as the continued response to COVID-19 and local outbreaks. From considering the Health Impact Assessments that Public Health Wales NHS Trust have undertaken on Brexit<sup>ix</sup> and COVID-19<sup>x</sup>, the population health areas that could be impacted by Brexit, winter planning and COVID-19 include:
- Economic recession, mass unemployment, the long-term impact on children, young people and vulnerable populations;
  - Mental health issues such as uncertainty, loneliness and social isolation, or anxiety;
  - Wider determinates of health such as healthy behaviours, housing, and air quality;
  - Supply of essential products which may be impacted by FTAs or stockpiling behaviours; and
  - Service delivery and resources (supplies and workforce) of the health and social care sector in Wales.
30. The impacts of COVID-19, winter, and Brexit cannot be managed separately. One key area of concern, given the impacts of concurrent events and command resilience, is avoiding duplication in response management. Since the same staff are responsible to manage the three scenarios, as identified above, work is underway across the sector and with WG to ensure the management frameworks are dovetailed to remove as much duplication as possible.
31. Communication to the public about processes in place, emphasising the need to not stockpile supplies such as food and medicine locally, encouraging applications to the EU Settlement Scheme, and the importance of receiving a flu vaccine will be key areas to communicate in the coming weeks and months.

### **Impact of FTAs with the EU and other countries**

32. In January 2020 we published a briefing<sup>xi</sup> that starts to examine how FTAs negotiated at a UK level could impact the NHS in Wales and how the key asks may differ between national and devolved administrations.

33. Health issues are often not high on the agenda (or on the agenda at all) in trade negotiations. However, FTAs with countries including the EU, US, Japan, and Australia should not result in lowering standards or increasing costs for patients and the health and social care system. This is also an opportunity to promote the core principles of the Welsh NHS, including equality, prevention, and the wellbeing of future generations

#### **Intra-governmental agreements and common frameworks**

34. The UK Government released an updated frameworks analysis<sup>xii</sup> policy paper on 24 September 2020 that shows a breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales, and Northern Ireland. In Wales, there are a total of 66 devolved policies areas that interact with EU law (35 require no further action, 13 non-legislative mechanisms, and 18 legislative mechanisms).

35. The health policy areas that require a non-legislative common framework include air quality, nutrition labelling/composition and standards, blood safety and quality, organs tissues and cells and public health, while areas such as mutual recognition of professional qualifications (MRPQ), food composition standards and labelling, and reciprocal and cross-border healthcare would require primary legislation. We have published briefings detailing how MRPQs<sup>xiii</sup> and reciprocal healthcare<sup>xiv</sup> could be impacted in a no-deal situation.

36. The overall landscape relating to EU Transition has also been further complicated by the UK Government's recently published UK Internal Market Bill. The proposals currently included in the Bill have significant implications for devolved powers and for implementation of parts of the Withdrawal Agreement agreed with the EU. The importance of delivering the common frameworks is now considerably heightened in the context of the UK Internal Market Bill.

#### **Brexit Health Alliance and Cavendish Coalition**

37. As an active member of the Brexit Health Alliance<sup>xv</sup> and Cavendish Coalition<sup>xvi</sup> we have ensured that any briefings produced or any submissions to the UK Government, House of Lords or Westminster Committees reflect the issues impacting on the health and care system in Wales.

38. Since our previous submission to the Committee in September 2019 the Brexit Health Alliance has published:

- A briefing in October 2020 on *How we can protect patients as we approach the end of the Brexit transition.*<sup>xvii</sup>
- A briefing<sup>xviii</sup> and infographic<sup>xix</sup> in August 2020 on *Healthcare rights for patients after Brexit.*
- A briefing<sup>xx</sup> and infographic<sup>xxi</sup> in June 2020 entitled *Pandemic ready? Charting a future relationship with the EU to help manage another coronavirus.*
- A briefing in June 2020 on *Negotiating a new relationship with the EU that safeguards patient access to medicines and medical technologies.*<sup>xxii</sup>
- A briefing in February 2020 on *Prioritising health in our future relationship with the EU.*<sup>xxiii</sup>

- A briefing in December 2019 on *Protecting the health of citizens and patients across the UK and EU: Priorities for a future relationship*.<sup>xxiv</sup>

39. The Cavendish Coalition has produced several resources that focus on the importance of maintaining a strong immigration system that supports recruitment into the health and social care sector. The published a response<sup>xxv</sup> to the proposed points-based immigration system, submission<sup>xxvi</sup> and response<sup>xxvii</sup> to the Migration Advisory Committee on their review into the Shortage Occupation List, as well as a letter<sup>xxviii</sup> to the Prime Minister with warnings<sup>xxix</sup> of what the new immigration system would mean for social care.

### **Welsh NHS Workforce update**

40. As part of the EU Transition Support Fund Grant received from the WG, the Welsh NHS Confederation commissioned the Wales Centre for Public Policy to analyse the likely effects of changes to UK migration policy on the health and social care workforce, which staff groups might be most affected, and the implications for the long-term workforce strategy for health and social care, including future retention and recruitment.

41. The report<sup>xxx</sup> found that due to changes to UK migration policy some EU nationals would be ineligible to work in the NHS in Wales (approx. 1% of the current workforce), suggesting that a small but not insignificant impact on future recruitment is likely for roles such as ambulance drivers, dental surgery assistants, social care support workers, health care support workers/ healthcare assistants, patient care assistants, emergency care assistants, and pharmacy assistants.

42. The implications for social care are more severe. Fewer roles will qualify for the HCV or Skilled Worker visa because they have been labelled 'low skilled', and the greater turnover of staff in the sector presents particular challenges, with likely knock-on impacts for the NHS. These roles are essential and should not be forgotten when considering the new rules and their coverage. While the immigration proposals are more favourable for recruitment into the NHS, consideration also needs to be given to the social care sector.

43. The impact of future immigration policies on the Welsh NHS workforce is a medium-term issue which are working closely with our members, social care, and external stakeholders to support and influence.

44. The Welsh NHS appears well placed to support current EU staff to apply to the EU Settled Status Scheme and to support future migrant workers through the new system. However, ensuring that as many eligible staff as possible apply to the EU Settled Status Scheme before the deadline of 30 June 2021 is a major concern for our members.

### **Conclusion**

45. The Welsh NHS Confederation, on behalf of our members, will continue to highlight the possible implications of Brexit on NHS Wales with the WG, Members of the Senedd and our stakeholders. In addition, as a member of the Cavendish Coalition and the Brexit Health Alliance, we will ensure that the impact for Wales is being made clear at a UK level by highlighting the likely effects on Welsh policy and legislation.

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